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Ontario. Legislative Assembly. I Select Committee
On the New Ontario Hydro Building

Hearings.

v. 8. July 24 — July 31, 1973

(37)

101/8

LEGISLATURE OF ONTARIO

SELECT COMMITTEE

HYDRO HEADQUARTERS

Tuesday, July 24, 1973.



July 24/73
10.07-10.10 a.m.
E.M.

LEGISLATURE OF ONTARIO
SELECT COMMITTEE - HYDRO HEADQUARTERS

The committee met at 10:07 o'clock, a.m. in the member's board room.

Mr. Chairman: Ladies and gentlemen, I call the meeting to order. I hope that we will be able to adjourn shortly after twelve o'clock for the funeral at two o'clock of the Provincial Auditor, an official of the House. For that reason I would assume we would go right through this morning without a break and I now pass the proceedings to Mr. Shibley.

Mr. Shibley: I call Mr. Moog.

Mr. Finlayson: I don't think Mr. Moog has come in yet. ~~He~~

Mr. Bullbrook: He has been sitting here for two months waiting ^{to get on} ~~for~~ and now —

Mr. Finlayson: Mr. Chairman, after the witness is sworn, he has an opening statement and I would ask your permission that he read it. I have prepared extra copies of it. It has some figures and diagrams in it and it would be much simpler for the members of the committee to follow if they had copies in their hands.

Mr. Chairman: Do you have copies for all of us now, Mr. Finlayson?

Mr. Finlayson: Yes, sir, I do.

Chairman:

Mr. ~~Chairman~~ I will ask Mr. Moore then if he will get those and distribute them.

Mr. Moog, may I have your full name, please?

Mr. Moog: Gerhard W. Moog.

GERHARD W. MOOG, sworn

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Mr. Chairman: Now, Mr. Moog, you have a statement, if you will just wait a minute while this is distributed. It appears to be a long one.

Interjections by members of the committee.

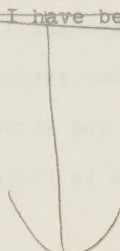
Mr. Chairman: I hope it is double spaced and all in capitals, Mr. Moog. All right, sir, at your convenience.

Mr. Moog: We are ready?

Mr. Chairman: Yes, sir.

Mr. Moog: Early history in industry: Prior to 1958 I was involved, originally in association with the late Ernest Rid^{my}out and later on ~~my~~ own, in the development of housing (both individual homes and apartments) and small office buildings, including several bank and trust company branches. In most cases I was responsible for land acquisition, design, construction, financing and, in the case of the office buildings, management.

~~Since '58 I have been involved in the following~~
~~five major projects:~~



(Tape H=1357 follows)

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(Mr. Moog)

2.....2 Since 1958 I have been involved in the following five major development projects:

- (a) Canada Square - Phase I.
- (b) Canada Square - Windsor.
- (c) Canadian Memorial Chiropractic College.
- (d) The Ontario Institute for Studies ~~in~~ Education.
- (e) Canada Square - Phase II.

Canada Square - Phase I (1959 to 1965)

3. Following lengthy negotiations with the TTC and Loblaws, which already had a lease of part of the site, I obtained in May of 1961 a lease from the TTC of air rights over its Yonge-Eglinton subway station and a portion of its bus garage. I and my staff designed a 17-storey office building containing over 500,000 square feet of office and commercial space and a double parking deck. In designing the project the following special problems had to be dealt with:

- (a) The operations of the subway and the ~~xxx~~ TTC's bus garage could not be ~~hampered~~ hampered in any way, either during construction or after completion.
- (b) The subway was not capable of supporting the foundations of the building and the top floors had to be suspended on specially designed beams spanning the subway and hanging six floors of the office building.
- (c) ¹Special facilities for Foundation Company of Canada's engineering division had to be designed in order to attract it as a core tenant.

4. During the course of the project we also leased and now operate the TTC's steam plant located in the area and sell steam to the TTC.

5. Following the completion of the project, I arranged a mortgage with the Penn Mutual Life Insurance Company for \$9 million at 6 1/8 per cent per annum which was closed in January, 1965.

6. This is the first example of a complete development programme with which I was associated. ~~xxx~~ It involved the acquisition of land, the design of the structure, the financing of

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the project, the attraction of prime tenants and the continued management of the completed building. It is to be noted that a very large construction company which had the capacity to build and finance such a project (Foundation Company) preferred to participate as a tenant. This paragraph is directed to emphasizing that construction alone is only a part of development.

Canada Square - Windsor (1965-1967)

7. Following a call for proposals and protracted negotiations between myself and the city of Windsor, in May, 1966, we leased lands on the riverfront in Windsor which had been previously acquired by the city as redevelopment area and agreed to build a hotel. Upon investigating the soil conditions, it was discovered that they were extremely poor, and my staff and I were faced with the problem of designing a hotel of extremely lightweight construction. As well as some 300 rooms, the complex includes public rooms, restaurants, office space and a 627-seat theatre.

8. Following lengthy negotiations, Holiday Inns¹ agreed in August 1966, to lease and operate the hotel. By reason of its unique design cantilevered over the Detroit ~~R~~ River, it remains one of that hotel chain's most successful operations.

9. Here again, as developer, we financed and constructed the hotel and other facilities and have retained ownership and management of the complex.

Canadian Memorial Chiropractic College (1967-1969)

10. I negotiated an agreement with the Canadian Memorial Chiropractic College pursuant to which the college exchanged its lands on Bloor Street West for lands and a new building to be constructed on Bayview Avenue. Before the Bayview Avenue site could be used, it was necessary to obtain re-zoning and to close and acquire a road allowance.

11. Under an extremely tight time schedule, my staff and I designed and constructed the new college building (including laboratories and an auditorium) which was completed within six months of commencement of construction. As a result of the move

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and with my assistance the college was able to completely rearrange its financial affairs and is now operating much more efficiently.

Ontario Institute for Studies ~~in~~ⁱⁿ Education (1967-1971)

12. In addition to the land acquired from the Canadian Memorial Chiropractic College, it was necessary for me to negotiate a lease with Metropolitan Toronto for certain rights over the St. George-Bedford subway station. On these lands and an additional parcel of land purchased by OISE itself my staff and I constructed a vertical university and research institute of 500,000 square feet, including lecture halls, a 10-level underground parking garage and a 600-seat auditorium, all built over the intersection of two subway lines. The design of the building was particularly arduous and complicated ~~because~~ because of the necessity to satisfy and combine the peculiar requirements of each of OISE's departments.

13. In order to provide OISE with its required accommodations without any substantial capital expenditure on its part, a new form of arrangement was developed, under which we agreed to construct, finance and maintain the building for a term of 30 years, at the end of which OISE would own the building free and clear of encumbrances. We constructed the building and are now operating and maintaining it.

14. In April, 1969, I arranged permanent financing of \$17 million at 8 1/8 per cent with the Equitable Life Assurance Society of the United States which transaction was finally completed in January of 1971.

↓
(Tape H-1358 follows)

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(Mr. Moog)

~~per cent with The Equitable Life Assurance Society of the
United States and the latter was finally completed in
January of 1971.~~

Canada Square - Phase II

Following extensive negotiations with the TTC, I obtained a lease of ground rights and further air rights over its Yonge-Eglinton bus garage in order to permit the construction of a second office building at the corner of Yonge Street and Berwick Avenue, together with additional parking facilities. These negotiations were extremely complicated due to difficulties in defining the air rights required.

I and my staff designed the new 18-storey building which contains some 500,000 square feet of office and commercial space, together with the additional parking facilities. Similarly difficult design problems arose as in the case of Canada Square - Phase I.

The permanent financing for the project was arranged at a time when mortgage money was extremely scarce. After lengthy negotiations I was able to place an issue of \$10,000,000 8 1/2 per cent ~~long~~ first mortgage instalment bonds, which were purchased by Occidental Life and Penn Mutual.

We continue to own and operate the building and parking facilities.

History of Ontario Hydro Transaction

Early June 1971 - Mr. Barry Brooks, who was then the Superintendent of Internal Services for the Ontario Institute for Studies in Education, telephoned me and advised me that officials of Ontario Hydro had inspected the OISE building. He told me that they had paid particular attention to the mechanical services and the standard of maintenance and had made inquiries as to whether OISE was satisfied as a tenant.

Subsequently^{to} Mr. Brook's telephone call, Mr. K. H. Candy, who is Commission Architect for Ontario Hydro, telephoned me and made an appointment to see me on June 11.

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Mr. Chairman: Sorry Mr. Moog.

Mr. Moog: Mr. Candy came to my office to discuss the financing, construction and management of a head office building for Ontario Hydro. He described the building which had been designed for Ontario Hydro by Gordon S. Adamson and Associates. He was interested in finding out whether we would be able and prepared to construct a building in accordance with the existing plans and finance and manage it under the same arrangements as the OISE transaction. At the time our organization was very much involved on a prospective project combining a new Ontario head office for the Bank of Montreal, a new Symphony Hall and the CBC new communications tower, endeavouring to create a Canadian landmark through this project. I advised Mr. Candy of this fact, but also told him that the project might fall through and that we would be then free to assist Ontario Hydro. At the same time I stated that the transaction with Ontario Hydro would depend to a great extent on the financing of the ~~new~~ project, that is the availability and cost of money, and told him that we had contacts both in Europe and the United States which I would canvass. Indeed, I told him that I would have an opportunity to find out more about the state of the European markets while I was holidaying with Premier Davis in England and Europe during a trip which we and our wives were planning shortly to take.

Early August 1971 - Mr. Cooper, our in-house architect, and I met at Mr. Candy's office to view the Gordon S. Adamson model. Before parting we asked for plans to study the proposal.

August 11, 1971 - Pursuant to arrangements made between Mr. Candy and me, Alec Johnston, who is our Vice-President of construction, met with Mr. Candy in his office and picked up the drawings referred to by Mr. Candy in his letter to me of August 10, 1971.

August 25, 1971 - Mr. Candy met with me at our office. I indicated that we were not interested in the original scheme and asked Mr. Candy if we could make a proposal for a different

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building. Mr. Candy thought he would have to think about that.

August 31, 1971 - Mr. Candy wrote to me on August 31, 1971 enclosing a copy of ~~the~~ the Ontario Hydro 1970 Annual Report and a booklet entitled "Ontario Hydro - 1970" explaining its financial position and operations which I had requested.

October, 1971 - During October 1971 our architect and I worked out a design for the Ontario Hydro office building involving a more standard type of structure and having a considerably lower cost. Details of this design are set out in the drawings and perspectives dated October 27 and November 15 and 26, 1971.

November 2, 1971 - Mr. Cooper and I met with Mr. Candy at our office on November 2, 1971 at which time we showed him sketches of alternative proposals. Mr. Candy was disturbed that we were doing this, but did offer some criticism of the designs.

November 9, 1971 - Mr. Candy wrote to me advising us as to the number of jobs which would be created by the construction of the Ontario Hydro Head office building which I asked him for.

November 22, 1971 - At Mr. Candy's suggestion he and I met with Mr. George Gathercole at Mr. Gathercole's office. ~~During the discussion which lasted an hour and ten minutes, I told Mr. Gathercole about our capabilities~~

Tape 1359 follows

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~~Mr. Gathercole's office~~ During the discussion which lasted no more than ten minutes I told Mr. Gathercole about our capabilities and attempted to convince him that we could assist Ontario Hydro in its head office project.

November 26, 1971 - At my urging, Mr. Candy came to our office and reviewed the plans and perspectives of the alternative design for the building. During our discussion I pointed out to him that the alternative design would result in an efficient but rather standard building without the design features of the curved building. I informed Mr. Candy that the alternate design would result in a considerable cost saving, but advised that in my opinion it would be in the best interests of Ontario Hydro to proceed with a superior quality building. By the end of our discussion Mr. Candy had advised me that he agreed that Ontario Hydro should select the curved design building.

January 13, 1972 - Mr. Candy came to our office on January 13, 1972 and looked at the preliminary model of the curved design building which our architect had prepared. We discussed certain modifications in the design and I obtained additional information regarding Ontario Hydro's requirements which I needed in order to make a formal proposal.

January 24, 1972 - We submitted our formal proposal dated January 24, 1972 to Ontario Hydro for the design, construction, financing, maintenance and operation of its new head office building based upon the curved design. We quoted a rental rate of \$4.92 per square foot per year based upon our expectations that we would be able to arrange a portion of the financing in Europe at 6.5 per cent with the balance in the U.S. or Canada at 7.75 per cent. We pointed out, however, that if these arrangements could not be finalized, the rental rate might have to be increased proportionately to a maximum of \$5.25 per square foot per year. We also pointed out the additional cost, being, however, part of the \$4.92, amounting to a total of 92.5 cents per square foot per year, of the extraordinary features incorporated

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in the design, including the curved shape, extra-wide spans, multilevel sculptured lobby, VVR mechanical system and ~~and more~~ etc.

February 10, 1972 - Mr. Candy wrote to us on February 10, 1972 enclosing a copy of a document which he had prepared outlining the requirements and conditions for the proposed Ontario Hydro head office building which had only been given to us verbally in the past.

Late March or Early April, 1972 - Mr. Candy met with me at our office to further discuss technical details of our proposal.

July 18, 1972 - Mr. Candy met with Mr. Coles, who is our Comptroller, and me at our office at which time I delivered to him the letter of July 17, 1972 which he had requested that I obtain from the Bank of Montreal which is our banker.

July 19, 1972 - A phone call or meeting between Mr. Candy and myself in which Mr. Candy told me Hydro would be negotiating with Canada Square.

August 3, 1972 - Mr. Candy came to our office and met with Messrs. Coles, Cooper, J.A. Bradshaw, who is our solicitor, and me. We discussed the transaction in detail and gave Mr. Bradshaw instructions to prepare the agreement. I understand Mr. Candy had made arrangements for Mr. McCallum to attend the meeting, but that he was unable to attend because he was having to appear elsewhere.

August 4, 1972 - Mr. Candy wrote to me supplying certain information which I had requested confirming certain details of the plans.

August 8, 1972 - Mr. Candy wrote to me enclosing material relating to the zoning of the lands on which the building was to be constructed and suggesting modifications to the design.

August 18, 1972 - Mr. McCallum met with me at our office to discuss the zoning of the property and the desirability of redesigning the building to eliminate the necessity of closing and purchasing a portion of Orde Street.

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Late August, 1972 - A draft agreement was prepared to be entered into between Ontario Hydro and Canada Square Corporation Limited and delivered to Ontario Hydro and its special counsel.

September 7, 1972 - Messrs. Coles, Bradshaw and I met with Mr. E. Houser, who is a partner of Mr. McCallum, at Mr. Houser's office to discuss the draft agreement which we had submitted.

September 12, 1972 - Mr. Candy wrote to me requesting me to contact Mr. D.W. Rochester, who is Manager of Properties for the Toronto Transit Commission, regarding the subway entrance.

13,
September 12, 1972 - I ~~was~~ wrote to Mr. Candy confirming that we were working closely with Mr. Rochester and the T.T.C.'s engineers.

Late September and October 1972 - There were almost continuous heavy negotiations involving Messrs. Candy, McCallum, Houser, Coles, Cooper, Bradshaw, D.J. Steadman, who is a partner of Mr. Bradshaw, and myself, leading to the eventual finalization of an agreement on November 1, 1972.

Analysis of Testimony of Mr. Vernon Tatham.

In his testimony before the Select Committee last week, Mr. Vernon Tatham of Y & R Properties Limited told you that if his company had been awarded the Ontario Hydro head office building contract, Ontario Hydro would have been able to save \$15 million. ~~Because of Mr. Tatham~~

H-1360 to follow

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~~had been awarded the Ontario Hydro head office building contract,~~
~~Ontario Hydro would have been able to save \$11 million.~~ Because of Mr. Tatham's status in the industry, I propose to take up some of the Committee's time in dealing with his testimony and putting it in a proper perspective.

Anyone who has seen the plans and specifications for and looked at the model of Ontario Hydro's new office building is well aware it is not the cheapest building which could be built on the site to satisfy Ontario Hydro's space requirements. The basic question is not "How can space be made available to Ontario Hydro at the lowest cost?" but rather "What kind of a head office building should Ontario Hydro really have?". Our organization addressed itself to this latter question right from the very beginning and in this connection I would like to refer you to the plans and perspectives which I have collected in Appendix A. We will study those later I suppose.

During the process, we analysed in some detail two different ~~designs~~ designs - one, being the design which was finally adopted, involving a curved structure, and the other, the design submitted to Mr. Candy through drawings and perspectives dated October 27 and November 15 and 26, 1971, involving a more standard type of structure. Indeed, in our formal proposal dated January 24, 1972, we pointed out that the special features included in the more expensive design would result in an additional annual rental of 92.5 cents per square foot. If Ontario Hydro had chosen to eliminate these special features, there would have been a substantial saving to it.

Of Mr. Tatham's alleged saving of \$15 million, some ~~\$6,240,000~~ \$6,240,000 is attributable to the fact that the building he was referring to was to contain some 208,000 square feet less of rentable space (calculated on the basis of his quoted cost of \$30 per square foot) and the remaining \$8,760,000 is more than offset by the cost of the special features which are to be included in the curved shape building and which have a capital cost of over \$9 per square foot or in total over \$10 million (calculated on the basis of the rental difference of 92.5 cents per square foot).

(Mr. Moog)

I understand that the building Mr. Tatham proposed to Ontario Hydro followed along the lines of the IBM computer centre which his company recently built in Don Mills. This type of design with its large floors and simple finishes is completely appropriate for semi-industrial uses, where computers and people work closely together and where land is not at a premium. However, without meaning any disrespect to Mr. Tatham, in our opinion it would be inappropriate to transplant such a type of building from the suburbs to the corner of University Avenue and College Street, where it will form part of the Queen's Park complex of buildings. The existing government buildings have not been built at the lowest possible price per square foot and it seemed to us that Ontario Hydro should have a structure which would be comparable and properly improve this prime downtown Toronto location.

During the hearings two yardsticks for measuring the new Ontario Hydro head office building have been mentioned - on the one hand the new head office for the Canadian Imperial Bank of Commerce and the other the Y & R computer centre, which I have just mentioned. We believe that the building we have designed and are presently constructing for Ontario Hydro will have all the amenities of the Commerce Court, including the same reflecting glass and reflecting glass spandrels and a superior mechanical equipment, at a rental rate to Ontario Hydro of less than two-thirds the rate paid by tenants of Commerce Court.

If Ontario Hydro had selected the simpler design set out in our drawings and perspectives dated October 27 and November 15 and 26, 1971, at \$3.995 per square foot, the ~~less~~ total annual saving in rental over that payable for the curved shape design would have been over \$1,100,000 while if the Y & R design had been selected, the saving in annual rental would have been only \$500,000.

(Mr. Moog)

However, neither our simpler design nor the Y & R design was acceptable to Ontario Hydro and it selected our curved design and in order to complete the comparison, I would like to explain to you the difference in rental of \$24 per square foot between Y & R's design at \$4.50 per square foot and our curved shape design at \$4.92 per square foot. In this connection, I wish to point out that all of the following figures have been introduced in evidence by our competitors or their consultants or are published by The Building Owners' and Managers' Association (BOMA)

Cost per square foot of gross building area

(a) Mechanical System

Canada Square VVR air conditioning system -
cost as per letter from Tamblyn, Mitchell &
Partners Ltd. to Hanscomb Roy Associates
dated July 5, 1973 (without allowance for
royalty or other charges) (Appendix B)

\$7.50 per sq.ft.

Y & R HVAC air conditioning system -
cost as per Mr. Tatham's testimony

\$5.00 per sq.ft.

Difference \$2.50
per sq.ft.

(b) Curtain Wall

Additional cost to Canada Square of curtain wall as per
Mr. Tatham's testimony \$5.50 per sq. ft. of curtain wall

~~Area of curtain wall~~
~~(\$5.50 x 155,000 sq. ft.)~~

~~155,000 sq. ft.~~

(Tape H-1361 follows)

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~~as per Mr. Tatham's testimony \$5.50 per square foot of curtain wall.~~

Area of curtain wall 155,922 square feet

Gross area of building 1,305,882 square feet

Additional cost of curtain wall per square foot of building is 5.50 times 155,922, divided by 1,305,882 equals 66 cents, a total of (a) and (b) - \$3.16.

Increase in rental in square foot occasioned by the increased costs of the mechanical system and the curtain wall alone assuming an interest rate of eight per cent per annum and a rentable area of 1,208,000 square feet an additional cost of \$3.16 per square foot of gross building area is equivalent to an increase in rent per square foot of rentable space of \$3.15 times 1,305,822 divided by 1,208,000 times .08697, that is the factor for eight per cent, equals 30 cents per square foot.

Thus, of the apparent difference in rental of 42 cents per square foot, 30 cents per square foot is explained by the superior mechanical system and curtain wall, leaving only 12 cents per square foot, which is more than offset by the escalation of maintenance costs which Y & R included in its proposal at ~~\$1~~ \$1.35 per square foot, applicable to the year 1974.

According to the BOMA figures, the average annual ~~per~~ increase in maintenance costs between 1970 and 1972 was over 11 ^{per} ~~per~~ cent. Assuming an increase in Y & R's figure of only eight per cent per annum between the 1974 base and ~~in~~ 1976 (which is the base year in our ~~agreement~~ agreement) there will have been escalation of 22 cents per square foot which more than offsets the remaining increase in rental of 12 cents per square foot.

In his testimony, Mr. Tatham has pointed out two differences between the specifications on the basis of which

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his company was ~~was~~ requested to make a proposal and those forming part of the agreement between Ontario Hydro and Canada Square. He has attributed a saving of \$1,100,000 to the 50 candlefoot reduction in lighting output and a saving~~and~~ of \$250,000 to the reduction in the floor loading ~~under~~ capacity of the building.

Without going into Mr. Tatham's cost savings, which I question, it is the fact that these changes do achieve some savings in cost to my firm. On the other hand, they in no way relieve ^{it} from its obligation to furnish Ontario Hydro with a building that has an appraised value of \$44,400,000, and accordingly to the extent that they may appear to be to our advantage, initially, unless offset, they can trigger a penalty clause which Ontario Hydro imposed on us that is very onerous.

~~By~~ The letter agreement of October 18, 1972 which was part of the closing documents provides:

"Should the appraised value of the project be less than \$44,400,000 then:

- (a) notwithstanding the provisions of section 32 of the Agreement the rental rate of \$4.84 payable by Ontario Hydro to Canada Square under the Building Lease shall be reduced in accordance with the following formula and such reduction shall ~~shall~~ also apply to all rent paid by Ontario Hydro prior to the commencement of the term of the Building Lease pursuant to section 33 of the Agreement
- 75 over 100 times the amount by which appraised value (as established above) is less than

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\$44,400,000 divided by 44,400,000 times \$4.84
equals the reduction".

Since the formula assumes that 75 per cent of the rental is in the cost of the building and 25 per cent of the rental is in the cost of maintenance, whereas in actual fact the ratio is ~~changed~~ to 65 per cent ~~rent~~ for the building and 35 per cent for the maintenance, when the appraised value of the building falls below \$44,400,000, Canada Square suffers a reduction in the rent associated with maintenance, even though the maintenance costs remain the same.

Cost vs. Value: I am fully aware of the question "value vs. cost". It is our company's opinion that a client should buy value, and the contract in this case is designed to give Ontario Hydro value. If a client buys cost, he may ~~lose~~ very easily receive something considerably below value. For instance, through a wrong design, or the purchase of obsolescence-prone equipment, or an unusually costly foundation, or increased costs occasioned by delays through strikes, or failure of suppliers or subcontractors, the total cost could rise to \$38 per square foot, but none of those cost factors would be reflected in increased value. The value could easily be only \$32 per square foot. It is our expertise which will create a value of a minimum of \$34 per square foot in the subject case. This is exactly what the agreement provides.

~~Having~~ ^{HAVING} said all that, it is submitted that at this ~~point~~ point in time the question is academic because whether Hydro bought cost or bought value, they are more than likely to end up with a building which on either approach will exceed \$34 per square foot by a considerable margin. In order to

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~~to~~ demonstrate this point, I make reference to a recent report which has been prepared for Hydro by Hydro's consultants, Hanscomb Roy Associates. Even though there are a number of items with which we disagree as being estimated too low, we will for the purpose of this exercise accept their cost estimate, which is an estimate of actual construction costs of the structure alone - \$37,499,000.

The further costs attributable to this project are as follows:

- | | | |
|--|------------------------------|----------------------|
| 1. Architects, engineering and all other consulting fees - 8 per cent, | <i>equals</i>
\$2,984,000 | ○ |
| 2. Legal fees | 250,000 | |
| (By the way Hydro omitted including this hearing). | | |
| 3. Interim financing, as per enclosed statement (see appendix C) | 6,919,187 | |
| totalling | \$10,153,187 | |
| | <u>Total -</u> | <u>\$47,652,187.</u> |

This amount, as you see, happens to be over \$3 million above the much exercised \$34 per square foot figure or \$44,400,000 even on a straight replacement cost approach prior to applying any inflationary factors which might be applicable in 1975. It is to be noted that in this calculation, no provision has been made for financing or underwriting charges which on the evidence of Donald Smith would be \$1 million on a project of this size.

In concluding this opening, may I suggest that ~~the~~ the straight cost approach of the unsuccessful bidders on this project has obscured what we consider to be a very exciting architectural concept. We could have designed and built a cheaper building; we even offered one. The choice of this concept was Hydro's and we guarantee it full value. The curved front and back in reflecting glass cannot be found in any comparable building in North America. The blending of the functional main building with the "people" plaza brings a new life and focus to the

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(Mr. Moog)

formal and institutionalized setting of University and College. The utilization of the most modern mechanical features ensures the ultimate in comfort and productivity. For all this the price is right. It resulted from hard bargaining; bargaining that ensured a project both sides can take satisfaction from.

Mr. Finlayson: Mr. Chairman, you will observe that in this document there is a reference to appendix B, the Hanscomb and Roy report. This was prepared to be delivered by Mr. Moog last Wednesday and that report hasn't been filed and hasn't been appended. I understand that it has been delivered to my friend, Mr. Shibley, and I am in the committee's hands about when that should be introduced. Those are the figures which for the sake of these calculations that -----

Mr. Chairman: What you are saying is that appendix A is not here, but it is *in Mr. Shibley's* ---

Mr. Bullbrook: Appendix B.

Mr. Chairman: Appendix B? Well I see appendix B - Tambllyn, Mitchell and Partners Limited. I don't see anything marked exhibit A.

Mr. Finlayson: Appendix A are the sketches, Mr. Chairman.

Mr. Chairman: Yes, I see them now, appendix A. What do you say is not here? There is appendix B - Tambllyn, Mitchell and Partners Limited. You are referring to Hanscomb are you?

Mr. Finlayson: You are quite right, Mr. Chairman. I was corrected on this. Hanscomb and Roy is referred to in the agreement. It is not an appendix even though it was ~~referred to~~ referred to one time as an appendix. You are quite correct. I just wanted to draw that to the committee's attention that the Hanscomb Roy report, of which we received a copy, has not been put in in evidence.

Mr. Chairman: Thank you Mr. Finlayson, and thank you,

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(Mr. Chairman)

Mr. Moog. I think that is helpful to all the members of the committee. It sets out in chronological order some of the things we have been trying to keep in our minds with the rest of the evidence. So thank you for that statement. Now Mr. Shibley.

Mr. Shibley: Mr. Moog, I am obliged to you for the statement because it saves me going into some of the history of your company.

Do I take it from this resume that your company has been engaged in relatively large projects as from the time of Canada Square, Phase One; that is the building over the TTC station at Eglinton? I say large; I mean large commercial as opposed to residential developments?

Mr. Moog: That is correct.

Mr. Shibley: Just while I am dealing with the matter of these buildings you have built, you have mentioned who are the tenants of Canada Square, Phase One, namely another construction company.

Mr. Moog: As a matter of fact we had two of the biggest construction companies as tenants.

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(Mr. Shibley)

~~Canada Square-Windsor~~
~~company~~

~~Mr. Moog: Hotel, commercial, theatre, shop space~~
~~specialized building~~ ~~Trans-Canada~~

Construction was also a tenant in our building.

And Foundation Companies head office, as you perhaps know, was in there and the building was at one time to be even named Foundation House.

Mr. Shibley: ^{Well then} Canada Square-Windsor was the hotel development there?

Mr. Moog: Hotel, commercial, theatre, ~~shop space~~

Mr. Shibley: Yes. There was no ~~where~~

Mr. Moog: ^{Upstairs} Shop space.

Mr. Shibley: Was there a principal commercial tenant in Windsor?

Mr. Moog: No. We built that on - well, we just started building and then we made an arrangement with Holiday Inns, but we took the risk until that point ourselves.

Mr. Shibley: Then the Chiropractic College that you mention on Page 4; you mentioned that you did a land exchange with them, obtained rezoning, acquired a road allowance and did a package deal for them. Is that correct?

Mr. Moog: That is correct.

Mr. Shibley: How did you become aware of the needs of the Chiropractic College and of the needs of OLSE?

Mr. Moog: Well, the President of an insurance company talked to me about the Chiropractic College problem on a trip I took with the Board of Trade.

Mr. Shibley: I see.

Mr. Moog: And upon my return he arranged for a meeting with several of the leading men in the College.

Mr. Shibley: I see. And then did you take it on from there to conduct the negotiations in question yourself?

Mr. Moog: Yes.

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Mr. Shibley: I take it you practise generally is to avoid middle men and to conduct your own negotiations, in as many areas as possible?

Mr. Moog: In all critical areas I would say yes.

Mr. Shibley: Yes. Now, then, when you say the critical areas, would you define that?

Mr. Moog: Well, I suppose that is primarily financing and until recently securing of tenants, the acquisition of land, design we do in house, we do use outside consultants to, of course, incorporate the latest talent available.

Mr. Shibley: Yes.

Mr. Bullbrook: Excuse me, Mr. Shibley. Perhaps I misunderstood the witness's response to your question. You asked him about the original involvement with the Chiropractic College and with OISE. Do I understand the evidence to be that the involvement with the Chiropractic College ante-dated any involvement with OISE?

Mr. Moog: It preceded OISE, yes.

Mr. Bullbrook: Just so we understand this, ante-dated or preceded any involvement by Canada Square with OISE?

Mr. Moog: That is correct.

Mr. Shibley: All right. Well, then, you have indicated OISE was a unique approach in terms of the documentation and form of the transaction. That was the first lease-purchase undertaking by your firm?

Mr. Moog: That is right.

Mr. Shibley: Now, I notice you mention the permanent financing on that transaction was Equitable Life. Were they on the financing from the outset or did you attempt financing otherwise?

Mr. Moog: I usually talk to quite a few top people in the financial community, before I undertake any project like that.

Mr. Shibley: Was there any Swiss financing attempted for OISE?

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Mr. Moog: No.

Mr. Shibley: Is there any Swiss financing attached to the financing for OISE?

Mr. Moog: None whatsoever.

Mr. Shibley: Then you mentioned then Canada Square, Phase Two. Again, could you tell us who are the principal tenants in the commercial building?

Mr. Moog: Yes. The building was conceived in conjunction with a satisfied tenant, being Occidental Life Insurance Company, who have been a tenant in Canada Square, Phase One, for, I believe, around 10 years or thereabouts. And we've become quite well ~~known~~ known to the officers at their annual meetings of the other companies. I have been invited to San Francisco and Los Angeles, to their head offices.

I should, perhaps, preface this with saying that Occidental is just one of many companies owned by the Transamerica Corporation. It happens to be, I understand, the ninth largest insurance company. But Transamerica owns also United ~~Americas~~, Budget Rent-a-Car, Pacific Finance and quite a lot of other companies. I can't recall right now.

Mr. Shibley: When did you make that ~~xxx~~ trip to San ~~xxxxxxx~~ Francisco?

Mr. Moog: Oh, I would have to refer to some of my colleagues to find out when that was.

Mr. Shibley: Fine.

Mr. Moog: But I was several times in San Francisco and several times in Los Angeles on that transaction.

Mr. Shibley: I see.

Mr. Moog: And I dealt with the President of Transamerica and the Chairman of the Board and the deal was made down there. *We won have all*

the financing - I am sorry
Mr. Shibley Are there any other principal tenants in that building?

Mr. Moog: ~~With the~~

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~~Mr. Shibley: I am not sure if the ETV is a
principal tenant in the building.~~

Mr. Moog: Well, we now have all Transamerica Companies as tenants in that building and we have also Canadian Tire Corporation with a large amount of space in that building. We have on the main floor two banks; we have something like three floors or thereabouts of ETV ETV. We have the federal government coming in with something like 55 or 60,000 feet, in that neighbourhood.

Mr. Shibley: In terms of the last two tenants, Mr. Moog, they are both governmental entities, so to speak. OECA is what?

Mr. Moog: You mean ETV or OISE?

Mr. Shibley: I thought I heard you say \leftrightarrow

Mr. Moog: I hope I said ETV.

Mr. Shibley: ETV. What is ETV? I am sorry.

Mr. Moog: I believe that is called OECA. As a matter of fact you are right.

Mr. Shibley: Yes, well that is what I thought it was too.

Mr. Moog: I refer to them as ETV.

Mr. Shibley: That's OECA?

Mr. Moog: Right.

Mr. Shibley: What is that?

Mr. Moog: It is the institution making films for, I guess, our educational programmes and departments.

Mr. Shibley: Of Ontario?

Mr. Moog: Yes.

Mr. Shibley: And how much space do they have in that building?

Mr. Moog: I would be glad to give you the correct figure. I am just guessing at the moment. I believe it is in the neighbourhood of 60,00 or thereabouts.

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Mr. Shibley: And then you said the Federal government also has space in the building?

Mr. Moog: Yes.

Mr. Shibley: And to what purpose and how much space?

Mr. Moog: It is the Department of Manpower and Immigration, and it is pretty well a like amount of space. There may be 10,000 feet or so differente. I just quote very roughly right now.

Mr. Shibley: Just to put it in perspective, Mr. Moog; these are areas relative to what total area in that building?

Mr. Moog: Total area is in excess of 400,000 ~~xxx~~ square feet.

Mr. Shibley: All right. Well, then, the next building is Canada Square Phase II which is the Transamerican building that we were just dealing with.

Mr. Moog: That is the building I just described.

Mr. Shibley: And then we ~~x~~ are now down to the Hydro building which is the last of the series. Is that correct?

Mr. W. Newman: Mr. Chairman, just for my own clarification, are there ~~xx~~ any tenants in Canada Square Phase II that ~~x~~ are governmental tenants?

Mr. Moog: In Phase I, none.

Mr. W. Newman: In Phase II?

Mr. Moog: In Phase II I just described -- that was the building called the Transamerican building. I am sorry.

Mr. Shibley: I just want to take you back a little earlier in 1971, Mr. Moog. During that month and particularly on the 3rd of March of that year, it appears that you had a luncheon with Premier Davis on that day. Did you, in fact, have a luncheon~~s~~ that day?

Mr. Moog: The diary ~~xxxx~~ says lunch and we might have had lunch and we might not have had lunch.

Mr. Shibley: All right. Did you at that time have any conversation with him referable to the Hydro needs for a

(Mr. Shibley)

Hydro head office?

Mr. Moog: No, Sir, none whatsoever.Mr. Shibley: When was the first occasion on which you had any communication with anyone referable to the ~~and~~ needs of ^{the} Hydro head office building? For a head office building.Mr. Moog: Outside of what I have just given you in my testimony? ~~That~~ That is Mr. Candy's approach and Mr. Brook's' approach?Mr. Shibley: Yes. Was there any communication earlier than the communication from Mr. Brooks?Mr. Moog: No, Sir, I didn't even know that there was anything going on.Mr. Shibley: Now, I should tell you that in his testimony Mr. Brooks had indicated that when he spoke to Mr. Sissons he recognized the fact that Hydro was experiencing accommodation problems. Did you have any communication with Mr. Brooks which might have alerted him to the needs of Ontario Hydro for accommodation?Mr. Moog: No. None whatsoever.Mr. Shibley: So that whatever was the -- whatever prompted Mr. Brooks to communicate with Mr. Sissons, you and ~~no~~one in your organization had anything to do with that?Mr. Moog: That is correct.Mr. Shibley: The initiative in this respect took the form of Mr. Brooks communicating with Ontario Hydro, their examining the building, and then the communications with you?Mr. Moog: That is correct. Just as outlined.Mr. Shibley: ~~That is correct. Just as outlined.~~

Tape H 1365 follows

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frk

(Mr. Moog)

Mr. Shibley: All right. I just want to try to pinpoint a little further -- you mentioned, in early June you got your call from Mr. Brooks and I notice that your statement ~~was~~ said: "Hydro had inspected", in the past tense. I want to know for sure that Brooks had said to you that the inspection had already taken place as opposed to having spoken to them and an inspection was pending?

Mr. Moog: It was my understanding that they ~~was~~ were through the building, yes.

Mr. Shibley: They had already been through the building?

Mr. Moog: Yes.

Mr. Shibley: That helps us establish a point of time.

When you spoke to Mr. Candy, you had already spoken to Mr. Brooks, how many times?

Mr. Moog: Just once.

Mr. Shibley: Just the one occasion?

Mr. Moog: That's all I recall.

Mr. Shibley: When you spoke to Mr. Brooks what was your approach to him in terms of his communicating with you?

Mr. Moog: I think it would follow my earlier described line by you, that if there was such a ~~xxx~~ ^{a tenant} as Hydro I would rather not have anybody go any further at all and I more or less acted non-committal. Then he said I didn't even write him a thank you note. I think that ~~is~~ is correct, or thank him for that.

Mr. Shibley: Your response to him ~~was~~ was one of ~~an~~

Mr. Moog: Indifference, I would think.

Mr. Shibley: Yes. Your purpose in that respect was to ensure that you didn't have a middle-man on your hands, so to speak?

Mr. Moog: It was more, if I may just clarify that point. If there was a serious large tenant, I would prefer to present my own company.

Mr. Shibley: I understand that. Was it another reason, however, that you were concerned lest Mr. Brooks consider himself a finder for you of a major new tenant?

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fvk

(Mr. Moog: No. Mr. Brooks has actually shown many people through the OISE building and has done that as a matter of courtesy.

Mr. Shibley: I still would like my question answered, Mr. Moog.

Mr. Moog: No, no. Not at all.

Mr. Shibley: Was it a ~~max~~ matter of concern to you that he might be looking to establish his position as a finder? You know what I mean by that?

Mr. Moog: No, sir. I know what you mean.

Mr. Shibley: And in any event, you didn't want any middlemen ~~and~~ dealings?

Mr. Moog: That is right.

Mr. Shibley: And you didn't want to be obligated to anyone in that respect?

Mr. Moog: I just wanted to take the deal myself in my own hands.

Mr. Shibley: Mr. ~~Brooks~~ Brooks had said that he had communicated with you whenever he was in touch with anyone who was interested in the building. He indicated that he had spoken to Mr. Sissons before the ~~last~~ visit in question. I take, from your evidence, that he waited upon the visit to the building before calling you?

Mr. Moog: I suppose so. That is what my recollection is, yes.

Mr. Shibley: Then you had a telephone call from Mr. Candy?

Mr. Moog: Yes.

Mr. Shibley: And was it your thinking, even at that very early date, that the whole of your ability to undertake this project hinged on money, the availability of money and the cost of money?

Mr. Moog: Mr. Shibley, I believe that that is a very crucial factor in a development proposition. I've been trying to outline what they consist of, it's real estate, it's financing.

Mr. Shibley: I know what you think in general terms, Mr. Moog, and I don't want to cut you short but I'm really interested in your state of mind as of January 4, I'm sorry, June 10, 1971 when

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Candy called you. It was your immediate thought that you could only undertake this project according as money was available and the cost of that money?

Mr. Moog: You mean when he called me over the telephone that I thought that out right then and there?

Mr. Shibley: Was it your thinking on ~~in~~ June 10-11?

Mr. Moog: When Mr. Candy came to my office I made that quite clear to him ~~that I thought what I thought when he called me~~. I suppose I ~~q~~ was quite surprised to have something come out of the phone call of Mr. Brooks. Usually I wait until these things come a little closer to me before I get really excited. I don't think that, at that time, ~~I~~ that immediately flashed through my mind.

Mr. Shibley: Then when you met with him on June 11, the day following, is it not a fact that it then became apparent to you that you had.....

↓

(Tape H-1366 following)

(Mr. Shibley)

~~and when you met with him in the office, the day following, is~~
~~it not a fact that it then became apparent to you, after you had~~
more knowledge of what was involved,

Mr. Moog: Yes

Mr. Shibley: that the crucial item, ~~using~~
your own term, was the availability of funds and the cost of funds
- is that correct?

Mr. Moog: I would think in the relationship
to a good rental rate, that is very important, yes.

Mr. Shibley: Well, was it your then thinking?

Mr. Moog: As a matter of fact, I think I
have mentioned to Mr. Candy that that would be a very important
item, yes.

Mr. Shibley: And you then formulated in your
mind the intention, I take it, to investigate the availability of
funds and the cost of money on your pending trip to Europe?

Mr. Moog: That was one avenue I would
certainly would try to find out about when I was in Europe, why not?

Mr. Shibley: I am not questioning you in
that respect, Mr. Moog, but I want it clear that you had formulated
the intent to investigate financing for the Hydro head office
building as at the time of your meeting with Mr. Candy on June 11,
1971?

Mr. Moog: As to exploring any money market,
yes, any money market, North America - Canada usually, unfortunately,
falls a bit short when we talk amounts like these. I would most
strongly rely on the North American market; they ^{have} ~~have~~ done all my
financing in the past, but naturally I wanted to know what the
situation looked like in Europe too, yes.

Mr. Shibley: And, of course, you had your
pending trip to Europe in mind at that time because your wife and
the Premier's wife had been planning it for some time.

Mr. Moog: That's right. I did not connect the two in that sense as you are ~~hoping~~ trying to put it to me. I certainly said to Mr. Candy that I would know more about money markets, yes.

Mr. Shibley: All right. I would like to produce to you what is Exhibit 13, a memorandum of Mr. Candy dated June 14, 1971. I overlooked one thing. Before I deal with this, Mr. Moog, and I am sorry to go back a little bit on it; let me have your attention for a minute.

When you got Mr. Candy's call, and before you met with him on June 11, did you have a discussion with Bob Tamblyn of Tamblyn Mitchell?

Mr. Moog: I often talked to him; we taught him all about air-conditioning we think, at least about ~~our~~ our system. So, it could be, I don't know.

Mr. Shibley: I would like you to think on that, Mr. Moog, for a moment.

Mr. Moog: I don't recall it.

Mr. Shibley: You don't recall the call?

All right. I would ~~like~~ like to go back then to the Exhibit 13 June 14, 1971. I noted in this document, Mr. MOog, the third paragraph, it says: "Mr. MOog, as well as having the various consultants, and the connections for obtaining finances, also has the necessary construction forces as he only goes into one large project at a time in order that he may devote his entire efforts in this direction." Now is that still your policy?

Mr. Moog: Oh yes.

Mr. Shibley: And it has continued to be the policy of your firm throughout the period with which we are interested, namely June, 1971 to date.

Mr. Moog: Oh yes.

Mr. Shibley: Have you undertaken any negotiations for any major projects since you undertook this negotiation with Hydro?

Mr. Moog: You mean since the contract was signed November 1?

Mr. Shibley: Yes.

Mr. MOog: Have I since then negotiated any new complex?

MR SHIBLEY: YES.

Mr. ~~Shibley~~: No, but we would be looking at certain propositions and when the Hydro project is finalized we would then like to overlap and at the final stage of the Hydro project ^{go into} ~~lead~~ another project, otherwise we would have a lot of staff on our hands with nothing to do.

Mr. ~~Shibley~~: Have you during the period ~~June 19, 1971 to date engaged upon~~ I mean serious

(Tape H-1367 follows)

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Mr. Shibley: Have you during the period June 14,th 71, to date engaged upon) -- (I mean serious negotiations) -- negotiations where a contract was pending for any other development?

Mr. Moog: Where our company would undertake another development?

Mr. Shibley: Yes.

Mr. Moog: Well, I did point out, I believe, that we were still heavily negotiating on the Bank of M^ontreal building, their new head office building. We had a very exciting plan for that. ~~And~~ I have stated that; and those negotiations continued parallel with Hydro negotiations for some time.

Mr. Shibley: And in respect to that project, had you been successful in obtaining it, would you have goⁿe forward with it simultaneously ~~←←←←←~~

Mr. Moog: I would not have wanted the Hydro project for sure.

Mr. Shibley: I beg your pardon?

Mr. Moog: I would not have wanted the Hydro project if I had gotten the other one. There is no question about that.

Mr. Shibley: I see. This other one took priority in your mind?

Mr. Moog: Well, it was a much more challenging project.

Mr. Shibley: What was it?

Mr. Moog: Well, we ~~xxxx~~ tried to create a landmark and I can s^how you a lot of detailed drawings, many more than we to date have on the Hydro project! ~~and~~ They include a very exciting tower designed by Arthur Eric^{son} who became our consulting architect to our own in-house architect. They contained a lot of drawings made for the Bank of M^ontreal. We wanted to incorporate the Symphony Hall and we wanted to adjoin it to the rotunda of the Union Station with arches and leave the Union Station rotunda and come up with something which we would have thought would be just a landmark project. It was very, very

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(Mr. Moog)

exciting; I would be very glad to show it to you.

Mr. Shibley: Your efforts in that respect were undertaken within what period of time?

Mr. Moog: They started long before the Hydro project.

Mr. Shibley: Were they still going on during the period June of 1971?

Mr. Moog: Oh, yes, they were. As a matter of fact I told Mr. Candy we were involved but it was a matter of where we would continue our efforts and we ~~went~~^{ran} into quite a few road-blocks on that project.

Mr. Bullbrook: Mr. Shibley, it is essential for me at least to understand when the exciting concept for the Bank of Montreal came to nought, because one of the positions taken by Hydro and eventually the government, in considering the acceptability of Canada Square, was their ability to devote themselves full-time to this single project, ~~and~~ I want to know in my own mind when the other project terminated.

Mr. Shibley: Mr. Moog, tell us what happened on that project.

Mr. Moog: I will be very glad to. There is quite a time period when I suppose my time is more necessary perhaps with my architects than a lot of our other people in our organization; and we were certainly very interested ~~in~~ⁱⁿ the Bank of Montreal project. As a matter of fact, we understood that we were the last of two competitors in quite a serious competition and if we could have obtained the land, I am led to believe that we would have built the building because it certainly was an exciting project.

We continued on it out by the time Mr. Candy walked in I told him "Well we are sort of petering out on that one. There are ~~obstacles~~^{road blocks} which may be insurmountable; we are still continuing; we have still negotiated, but it looked as if we were losing the

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(Mr. Moog)

battle. I don't think I really want to go through about why.

Mr. Bullbrook may be very interested in it but -----

Mr. Bullbrook: No, really, I have no ~~motivation~~ ^{same}

believe me, Mr. Moog, other than defining this situation, because as you know, Mr. Chairman, it is very relevant ^{to} us assessing the validity of Hydro's position.

Mr. Moog: I pointed out to Mr. Candy that we were working on that project and that it was on the way <----->

Mr. Shibley: When is really the question, Mr. Moog? When did it come to an end?

Mr. Moog: We didn't know whether we had anything going with Hydro either when Mr. Candy walked in.

Mr. Shibley: But when did it come to an end?

Mr. Moog: I would really have to look again at the records in my architect's office and see how late we still worked on it. I suppose we all would have liked to have that one rather than any other project.

Mr. Shibley: We realize that, Mr. Moog, but <----->

Mr. Moog: I can't help you right at this moment. I think it worked on for several months anyway and for what length of time <----->

Mr. Shibley: All right. Did you engage upon negotiations for any other major project?

Mr. Moog: No.

Mr. Shibley: None whatever?

Mr. Moog: No. Well, I can't recall any. There may have been something which maybe other people would call major, but I can't recall any at all.

Mr. Shibley: Did you in particular have any negotiations for a building for the TTC?

Mr. Moog: No.

Mr. Shibley: All right. I have to cancel things out, Mr. Moog.

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Mr. Moog: I am sorry but ~~-----~~

Mr. Bullbrook: Could Mr. Moog provide us with that
date from the record^s?

Mr. Shibley: Yes.


Mr. Moog: Mr. Bullbrook, I would just like to make this
statement to clarify this point. ~~At this point we are going to come~~

~~----- had nothing to do with it.~~


Tape H - 1368 follows

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PLG(Mr. Moog)

~~make his this statement to clarify this point.~~ This kept on going for some months and we had nothing with Hydro. We didn't know if we were going to get any place with Hydro. We kept on pushing on that one as well as dealing with Hydro, but we had no deal with Hydro whatsoever, so this happened to continue for quite some months now. I would have to just find out when the last Architectural point was made or when the last appointment was made.

Mr. Chairman: I think that is what Mr. Bullbrook is asking, that you check your records 

Mr. Moog: I will try to find out, *as accurately as I can.*

Mr. Chairman:  as to the date on which your ~~name~~ company still considered the other project alive.

Mr. Shibley: Well, then, if we may go on with the memorandum of Mr. Candy, there is reference in this letter to a 1 1/2 million square foot proposition pending in downtown Toronto.

Mr. Moog: That is the very one.

Mr. Shibley: All right. Then he goes on and he says: "He says that he is going over to Germany next month as an ~~adviser~~ ^E to the Premier of Ontario to arrange further financing for the province."

Would you please tell this committee whether you said that to Mr. Candy?

Mr. Moog: I have talked to Mr. Candy and I asked him where he got the word from ~~and~~ ^{that} all I said to Mr. Candy ^(H) that I considered financing very important to this project; that I would be going over to Europe and that I would try to find out about the money situation while I was there; and that I might sit in with the Premier on a meeting which he was thinking of bringing about in Munich.

Mr. Shibley: I see.

Mr. Moog: And it was in that connection that I suppose Mr. Candy thought up the word 'adviser' ^E. I am not trying to blame Mr. Candy. He could have easily taken anything out of that.

(Mr. Moog)

We met the first time and I certainly said I was going over there and I was going to, hopefully, sit in on a meeting with some financial sources in Munich, yes.

Mr. Shibley: And did you tell him then that you might then be looking into the financing for their project?

Mr. Moog: No. I just wanted to inform myself generally. I had the other projects still going, too. I was quite interested to find out if about money markets in general. That is a really a very prime function of my business.

Mr. Shibley: I must tell you, Mr. Moog, I was listening carefully to your first statement of evidence and I thought you included in it an indication that you told Candy that you might use the opportunity to find out about funding their head office. You say that is not so?

Mr. Moog: I could have said that. I am really not quite certain which way I expressed it. My recollection is that I was going to find out about financing or would ~~know~~ know more about financing anyway.

Mr. Shibley: I see. So that in any event, whatever words were used and whether you used the two together, you were discussing the need for ^{funding} financing for ~~their~~ their building?

Mr. Moog: That is correct.

Mr. Shibley: And you were also discussing your pending trip to Europe when you were expecting to be visiting a bank?

Mr. Moog: Some bankers in Munich, yes.

Mr. Shibley: Yes. And is it fair to conclude that whatever you said to Mr. Candy, he was looking forward to the results of your inquiries during the course of your trip to Europe?

Mr. Moog: I can't speak for Mr. Candy.

Mr. Shibley: I know you can't, but just from what you said to him would that be your thinking and his at the time? That matters should wait until you sized up the financial market?

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Mr. Moog: Oh, I don't think that I particularly said they should wait. I certainly ~~km~~ knew a fair bit about financial markets.

Mr. Shibley: I agree with you.

q Mr. Moog: In NOrth America and Europe.

Mr. Shibley: It is not your nature to wait, Mr. Moog. I agree with you. I shouldn't have used that phrase. That with respect to financial matters, not with respect to architectural efforts, that you might wait until you saw what happened on your trip to Europe in August, which ultimately took place in August, and your other inquiries as to financing before you really moved forward on this negotiation?

Mr. Moog: No, I don't think I said it that way. I don't think I gave that impression. I hope I didn't.

Mr. Shibley: All right. Now, then, so that you did not, in any event, say to him that you were going to be an advisor ~~to~~ to the Premier of Ontario, is that correct?

Mr. Moog: No, Sir.

Mr. Shibley: And you did say to him that you would be sitting in to give the Premier, I gather, the benefit of your ideas?

Mr. Moog: Well, I said I would sit in with him.

~~I don't think I ever gave the impression that I was going to be an advisor to the Premier of Ontario.~~

~~Mr. Shibley: And you did say to him that you would be sitting in to give the Premier, I gather, the benefit of your ideas?~~

Tape H 1369 follows

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M.R.

(Mr. Shibley)

~~... be sitting in to give the Premier the benefit of your ideas?~~

~~Mr. Moog: I said I would sit in with him~~

Mr. Shibley: And did you ~~with~~ ---

Mr. Moog: I don't think that I enlarged on that.

Mr. Shibley: I see. Did you say anything to the effect that you were only sitting in so that you might give the Premier the benefit of your ideas?

Mr. Moog: I don't think I said that at all.

Mr. Shibley: I see. Well, what was to be the purpose of your sitting in on the meeting?

Mr. Moog: Well, I would learn more about financing in Europe.

Mr. Shibley: I see. So that it was going to be part of your own educational process ~~with~~

Mr. Moog: Quite so.

Mr. Shibley: ~~as well~~ as well. And there was no intention to have discussion as between you and the Premier in that respect thereafter?

Mr. Moog: Oh, no.

Mr. Shibley: Mr. Moog, you were even as of June 1971 familiar with the financial markets of Europe, were you not?

Mr. Moog: I am, hopefully, always quite familiar with financial markets, yes.

Mr. Shibley: When I get answers like that I'm not sure that I have had an answer, Mr. Moog. Were you familiar in June of 1971 with the financial markets in Europe?

Mr. Moog: I suppose in a superficial way, yes, what you read in the newspapers but that isn't what you ~~see~~

Mr. Shibley: Had you not had dealings over there up until that time?

Mr. Moog: No, sir.

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Mr. Shibley: This was your first venture into the financial markets of Europe, so to speak?

Mr. Moog: Oh, no. I've got friends in Europe in the financial market. I've got banker friends and everything over there. Why shouldn't I?

Mr. Shibley: No, but I mean in terms of your own financing of projects. Had you done any financing in Europe prior to June of 1971?

Mr. Moog: I think I have to go back some - I don't even know how many years now - I did finance a land assembly many, many years ago, And I would think probably 16, 17, 18 years ago, where I got some European funds.

Mr. Shibley: From what particular country?

Mr. Moog: From Germany.

Mr. Shibley: Yes. Was that the only prior financing in Europe?

Mr. Moog: That's - it was merely assembling land for a German investment broker.

Mr. Shibley: Yes, that was the only one?

Mr. Moog: Yes.

Mr. Shibley: Now, then, did you, at any time, tell the Premier that you had made this observation to Mr. Candy when you met with him on June 11?

Mr. Moog: No, sir.

Mr. Shibley: Did you, at any time, tell anyone in the Premier's office that you had made this observation, to Mr. Candy?

Mr. Moog: No, sir.

Mr. Shibley: Did you, at any time, tell anyone in government that you had made that observation?

Mr. Moog: No, sir.

Mr. Shibley: Are you aware of whether or not Mr. Candy in turn communicated that information to others within Hydro? Do you have any information in that respect?

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Mr. Moog: I've seen correspondence since this hearing.

Mr. Shibley: Yes?

Mr. Moog: but that was all I knew.

Mr. Shibley: In your discussions and the discussions of your people during the months of June and July and before you left for Europe with the Premier on August 9, I believe, I'm sorry, August 8, did the matter of your attending in Europe with the Premier form any part of your discussion with anyone else within Hydro?

Mr. Moog: It was a complete side issue.

Mr. Shibley: That's not what I asked you.

Mr. Moog: I'm sorry, I didn't quite.

Mr. Shibley: In the course of communications, written or oral, between yourself and anyone else within Hydro, prior to your leaving on that trip, did you make - was it any part of the conversation between yourself and anyone within Hydro?

Mr. Moog: No, sir.

Mr. Finlayson: I just lost that entirely. What are you asking him? Are you saying

Mr. Shibley: I just want to know

Mr. Finlayson: that this conversation ^{with Candy?} did that ever take

Mr. Shibley: No, I'm sorry. I'll make it clear. Did you reference the fact that you were going to be going to Germany - I'm sorry, to Europe with the Premier and hope to sit in on a meeting with European bankers with any other member of Hydro prior to the time of your leaving or did any of them reference it to you?

Mr. Moog: I didn't know any other members of Hydro.

Mr. Shibley: All right. The only person you dealt with pending your trip was Mr. ~~xxxxxx~~ Candy?

Mr. Moog: Quite correct.

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Mr. Shibley: Mr. Moog, you then left on that

trip

Mr. Bullbrook: Before you leave on ~~the~~ trip, —

Mr. Shibley: Yes? I'd like to take one.

Mr. ~~Bullbrook~~ ^{Moog}: So would I.

~~Mr. Bullbrook~~ ^{Moog}: So would we all.

Mr. Bullbrook: Do you anticipate interrogating

the witness as to the discussion he had with the Premier

in connection with the trip that their families

H-1370 to follow

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E.M.

H-1370-1

~~Mr. Bullbrook~~

(Mr. Bullbrook)

~~I'd like to take one.~~

~~Mr. Moog: So would I.~~

~~Mr. Bullbrook: So would we all.~~

~~Do you anticipate interrogating the witness as to the discussion he had with the Premier in connection with the trip that their families would take together and when that might have taken place, and his understanding of the purpose and of the meeting that the Premier wished, whether he did assist in the development of that meeting?~~

Mr. Shibley: Yes, all right, Mr. Bullbrook.

I have already asked you, Mr. ~~Moog~~ Moog, about the planning for this trip having occurred some time prior to June 11th; I gather was ~~was~~ ⁱⁿ discussion part between you and Premier Davis and between your respective wives?

Mr. Moog: I think the wives were the ones who pushed for the trip.

Mr. Shibley: Yes. In terms of prior discussion - and I mean any discussion prior to your actually making the trip, ^{that will be} ~~in~~ prior to August 8th - what conversations did you hold with the Premier in respect of the trip?

Mr. Moog: It was strictly holiday trip and he once in passing mentioned if we should touch Munich he would like to meet with some bankers and have me sit in on it. ^{It} ~~was~~ was just a passing remark of ~~his~~ his.

Mr. Shibley: And did you respond in any way?

Mr. Moog: I don't think I did at all, it was fine if it comes ~~up~~ and fine if it doesn't.

Mr. Shibley: When did he make that comment?

Mr. Moog: It could be at his house, it could be at my house, I would not recall. I can't recall.

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Mr. Shibley: And that is all that was said?

Mr. Moog: That is all that was said.

Mr. Shibley: Was there any subsequent discussion in that regard?

Mr. Moog: No, sir.

Mr. Shibley: You remember the Premier particularly singled out Munich as a place because it was where his wife did post-grad work and so on?

Mr. Moog: That is right.

Mr. Shibley: And then he went on to say that Stuttgart might have been more accurate as the ---

Mr. Finlayson: Frankfurt.

Mr. Moog: I could say Frankfurt myself.

Mr. Shibley: I am sorry, Frankfurt would have been more accurate as the place, is that correct?

Mr. Moog: Well, it should be Frankfurt really.

Mr. Shibley: Yes. And did you discuss that aspect of the matter with him at any time?

Mr. Moog: No. I thought if he wanted to meet some German banking people, I would be glad to meet with them and ^{glad} ~~planned~~ to sit in with them.

Mr. Shibley: Mr. Moog, I am just interested to know how the Premier would know that Frankfurt rather than Munich would have been the proper place.

Mr. Finlayson: Quite the reverse. ^{he thought it was} ~~unnecessary~~
~~which~~ Munich and it should have been Frankfurt.

Mr. Shibley: That is the point I am making.

Mr. Finlayson: Yes, but you just turned it around. Perhaps

Mr. Shibley: I didn't mean to say that. ^{The} ~~Mr. Shibley~~

Premier in his testimony said he asked to go to Munich; he

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(Mr. Shibley)

realizes now, I think, that it would have been preferable, or the more precise place to have gone would have been Frankfurt as the centre of the financial world, so to speak.

Mr. Moog: I would have thought so, yes.

Mr. Shibley: ~~ixxxxx~~ Did you tell him that?

Mr. Moog: No, but there are banks in Munich as well.

Mr. Shibley: I see. *He didn't* —

Mr. Bullbrook: Mr. Chairman, I want to clarify with you if I can something that I consider extremely important. The witness hasn't touched upon it, and it might well be that he will through your interrogation touch upon it. That is, I want to know from the witness whether the Premier conveyed to him the purpose of the trip. I want to make it amply clear to the witness, through the Chairman and yourself, that one of the purposes of the trip might have been for Mr. Moog, as exemplified by his opening statement, to have an opportunity to find out more about the state of European markets. The evidence of the Premier without equivocation is that he wasn't interested in the European financial market, ^{but} that the purpose of the trip was to have a general discussion with the representatives and he amplified that by saying, if I recall correctly, that he was vitally interested in the effect of the American economy at the time.

Now, I am sorry, sir, to keep interrupting you but it is very important from my point of view as to whether this witness knew the purpose of the Premier at the time.

Shibley
Mr. Shibley: ~~Chairman~~ Well, Mr. Bullbrook, -- wait a minute, Mr. Finlayson, ^{just} hold it on that, I ~~think~~ think you have to take into account that the purposes of the Premier may

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(Mr.Shibley)

have been one thing and the purposes of this witness another.

Mr. Bullbrook: I realize that fully.

Mr. Shibley: And I am anxious to point that out to Mr. Moog so that he doesn't, so to speak, get led into a response.

~~Mr. Bullbrook: Mr. Shibley, that is why I am being very broad in my comments and pointing out to the witness~~

(Tape H-1371 follows)

(Mr. Bullbrook)

~~realize that fully~~

~~Mr. Shibley: And I'm anxious to point that out to Mr. Moog so that he doesn't, so to speak, ⁽⁵⁷⁾ ~~be~~ led into a response.~~

Mr. Bullbrook: Mr. Shibley, that's why I'm being very broad in my comments ^{and} ~~in~~ pointing out to the ~~the~~ witness my desires ahead of time. But not yet has Mr. Moog been asked, or answered, whether he knew the purpose in the mind of the Premier.

Mr. Chairman: Do you have a comment, Mr. Finlayson?

Mr. Finlayson: No. I didn't think Mr. Bullbrook quite properly stated the evidence of the Premier because he had intended to go over there with a view to seeing some people in Munich and then the plans changed. I think ~~that~~ ^{the} sort of a general economic overview was his intention ⁱⁿ ~~with~~ meeting with this individual as the former Minister of Finance in Switzerland at Zurich. I think we've got to keep with the sort of ^{THE} ~~sort~~ initial intention on the part of the Premier. Then there was a second intention with respect to the second bank.

Mr. Shibley: Let's go back a little bit. He made this comment to you in the context of what ambition on his part - in the sense of what did he hope to discover by this ~~second~~ attendance in Munich?

Mr. Moog: He didn't say any more than that was that.

Mr. Shibley: I see.

Mr. Moog: This is what ^{was} ~~I~~ previously stated.

Mr. Shibley: He just said he wanted to -

Mr. Moog: Yes. If a meeting came about he thought he would like me to sit in.

Mr. Shibley: Yes. Did he ask you to make any arrangements for such a meeting?

Mr. Moog: No, sir.

Mr. Shibley: How was the meeting to come about?

Mr. Moog: I don't have the faintest idea. It was a complete side issue.

Mr. Shibley: Do you know whether he took any steps to

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fvk

(Mr. Shibley)

arrange such a meeting?

Mr. Moog: I don't know to this date.Mr. Shibley: Was it a part of your original itinerary to go to Munich?Mr. Moog: We talked about going to Munich. We just make all thought we would get away and then ~~make all~~ plans as we land but certainly, a holiday trip.Mr. ~~Sh~~ Shibley: So that to make it complete, Mr. Moog, did he, even ~~in~~ during the course of the trip or thereafter, ever make it clear what his purpose was in attending upon a European bank?Mr. Moog: After the trip?Mr. Shibley: Even after, or during.Mr. Moog: During?Mr. Shibley: During the trip, after the trip, at anytime:
I gather you must have had conversations about a visit to a bank during the trip.Mr. Moog: Before we left he made this passing remark, yes.Mr. Shibley: Right. And then you got over there. ~~Was~~Mr. Moog: Yes.Mr. Shibley: Was there anything said while you were there?Mr. Moog: It looked as if we wouldn't touch Munich because, as often is the case with the Premier, his time is rather very limited and we realized that we weren't going to be away for more than a week so that part was dropped.Mr. Shibley: Just before you go on, while you were still hoping to be in Europe for longer than a week, was there any discussion about going to Munich and its purpose?Mr. Moog: No. None whatsoever.Mr. Shibley: I see.Mr. Moog: I never heard about that again.Mr. Shibley: The next you heard about visiting a bank was when you were on your way through the Black ~~Forest~~ Forest?Mr. Moog: That's right.Mr. ~~Sh~~ Shibley: ~~From~~ Okay. From your point of view

(Mr. Shibley)

any trip to a bank would have to do with the availability of funds - testing the market, so to speak?

Mr. Moog: I would like to know, yes.

Mr. Shibley: Because you're a developer and you're interested in source of funds for your developments?

Mr. Moog: Quite so.

Mr. Shibley: And you were interested in establishing as many contacts over there as possible?

Mr. Moog: Right.

Mr. Shibley: Let's go on with this matter of the trip. I want to skip forward, if I may with you, to complete the picture on the trip itself. You left on August 8 and I take it you went first to London. Is that correct?

Mr. Moog: That is right.

Mr. Shibley: Did you stop over in London?

Mr. Moog: Yes, we did.

Mr. Shibley: Was any business transacted by you, or the Premier, while in London?

Mr. Moog: Not while we were ~~there~~ together. He was away for several hours and he might have done some business. He was also on the phone quite often ~~by~~ but not in my presence.

Mr. Shibley: And you yourself did not transact any business there?

Mr. Moog: None whatsoever.

Mr. Shibley: Then you went from London to to where?

Mr. Moog: To Stuttgart.

Mr. Shibley: And by the time you arrived in Stuttgart^t was it decided that the trip had to be cut short?

Mr. Moog: I believe it was more or less decided in London but I can't recall. It might have been Stuttgart. I had always hoped that we could have spent a few more days.

Mr. Shibley: You rented a car in Stuttgart?

Mr. Moog: No, it was car of a friend of mine.

Mr. Shibley: I see. You borrowed a car. Would you then

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fwk

(Mr Shibley)

tell this committee, in your own words, what took place?

Mr. Moog: Yes, we had a very enjoyable trip through the Black Forest. We stayed at various little places.

(Tape H-1372 follows)

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(Mr. Shibley)

~~tell the committee, in your own words, what took place.~~

~~Mr. Shibley: Yes, I made a very short trip~~

~~through the Black Forest and to some of the little places,~~

Mr. Shibley: For how many days?

Mr. Moog: I think around three days.

Mr. Shibley: This was now a substitution for going to Munich.

Mr. Moog: That's right.

Mr. Shibley: You knew you ^{only} had a limited amount of time and you were using that time to make a trip through the Black Forest?

Mr. Moog: That is right. I also knew the Black Forest because I studied at the foot of the Black Forest.

Mr. Shibley: Yes. And it was an area of particular interest to the group.

Mr. Moog: That's right.

Mr. Shibley: All right. In the course of that trip, what took place that brought about the visit to the Swiss ^{BANK} ~~bank~~?

Mr. Moog: At one of the evenings, I suppose, it became quite evident that we would just be going through Germany rather in a hurry and probably end up in Zurich because I also have friends on Lake Constance, and when I mentioned that ^{we} perhaps ought to leave then from Zurich, because that seemed to be all the time available, the Premier sort of perked up his ears and said "Oh, do you have any banking friends there, or any connections in Zurich?" I said, "Well, I can call a good friend of mine and see whether he can get us some."

Mr. Shibley: Yes, and did you?

Mr. Moog: Yes.

Mr. Shibley: And was an arrangement made for you to visit a bank in Zurich?

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Mr. Moog: Yes, there was an arrangement made to visit a bank in Zurich, Mr. Shibley.

Mr. Shibley: On that same day?

Mr. Moog: I think I might have called back again to get the appointment set up.

Mr. Shibley: I understand that meeting took place on August 13. Can you help me as to when the arrangements for the meeting were made?

Mr. Moog: Probably just a couple of days before.

Mr. Shibley: I see.

Mr. Moog: On our way.

Mr. Shibley: Was it a specified time that you were to be there?

Mr. Moog: Yes, it was a time to just fit it in at the closing of business on that Friday, the 13th, which is a good day for me.

Mr. Shibley: You too eh.

Mr. Moog: A particularly good one for me, Mr. ~~Shibley~~ Shibley.

Mr. Shibley: Then, Mr. Moog, I gather it was a specified time you were to be there on the 13th.

Mr. Moog: Yes, it was late in the afternoon and I remember us sitting with friends of ours on beautiful Lake Constance, drinking a bottle of wine, and knowing that we were getting very close to closing hours. But we had a very fast Mercedes so we finally decided, well fortified, to test the capability of the machine. And I have to admit I took a wrong turn, that was my first problem, and then I had a flat tire. So the Premier and I got out and fixed it and we ~~are~~ more or less thought, well, here goes our meeting anyway, so what, it's Friday afternoon, we'll have another day or two in Zurich and enjoy ourselves. However, I guess I was quite persistent ~~about~~ and driving quite fast. We made it to Zurich; we didn't have time to change so we had another very important decision, and that was whether we would walk in slightly

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(Mr. Moog)

soiled tourists' outfits or whether we would change and look proper to meet some of the high-ranking Swiss banking officials. Well, we decided further to not contravene Swiss punctuality and that's the way we walked in. We were almost not let into the bank the way we looked.

In the bank, we met two very high officials, yes. We sat in a very big board room and I explained our misfortune on the way and told them that I routed ~~in~~ in favour of punctuality knowing what punctuality means to Swiss people, and they liked that attitude very much and we had a good laugh about that. And then we sat down and had a discussion about economic affairs and international affairs; one of the gentlemen was very much informed about those.

Mr. Shibley: He was a person with a political background.

Mr. Moog: Yes, a very good political background, yes.

Mr. Shibley: And you mentioned that they were very high officials.

Mr. Moog: Yes.

Mr. Shibley: in the bank, would they be among the two of the three top officials of that bank?

Mr. Moog: Well, I couldn't say for sure but I would presume that they are in that category. Whether there are two or three or two or five I really don't know.

Mr. Shibley: While I am on that, in the course of that meeting ~~did you not make a note of the three people, the chain of~~

(Tape H-1373 follows)

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PEG

(Mr. Shibley)

~~Well, while I was in the room, I saw that person, did~~
you not make a note of the three people or the chain of command within the hierarchy of that bank?

Mr. Moog: No, I got that information later on from my friend who made the appointment for me. I didn't know the third person. I never met the third person on that note.

Mr. Shibley: I see. That note, Mr. Moog, is part of the content of the file which is in issue?

Mr. Moog: That's right, Mr. Shibley.

Mr. Bullbrook: Is that still ~~an~~ issue?

Mr. Shibley: Well, let's not get to that yet, Mr. Bullbrook. We'll get to it in a moment.

Mr. Bullbrook: Well, I tell you, ~~I~~^{id} like to know *today* whether it is an issue or not.

Mr. Shibley: We have got such another interesting story ~~as~~

Mr. Bullbrook: *(It's a lovely narrative)*
~~It's a lovely narrative~~

Mr. Shibley: Let's stay with one narrative and we'll get to another later. All right, when you were having this conversation in this room in the atmosphere you have described, was that conversation in English?

Mr. Moog: I believe the introduction I probably started in German and then switched into English, and the first part of the conversation, when we four talked together, was in English. The second man - second in command, I may want to call him right now and I don't know where he exactly fitted in the ladder, but he certainly was a high official. One went off with me towards the window on the far end of a rather large board room and we kept on chatting and I switched into German, into my native language.

Mr. Shibley: Yes, ~~now~~ ^{How} Mr. Moog, let's go back for a moment. Could you give the committee, without mentioning names, something of the magnitude of this bank? How does it compare, so to speak?

Mr. Moog: Well, perhaps, Mr. Shibley, I could just say that it is a large bank. Would that be satisfactory?

Mr. Shibley: It is a very large bank?

Mr. Moog: It is a good-sized bank.

Mr. Chairman: Is that the size of the building or the number of depositors?

Mr. Shibley: And you have already said ~~no~~ →

Mr. Moog: I haven't checked the latter.

Mr. Shibley: You have already said that the conference room in which you were meeting was a very large room?

Mr. Moog: That is right. Very beautiful.

Mr. Renwick: Mr. Chairman, Mr. Shibley & might ask whether the two men you met with could be classified amongst the ~~names~~ ^{names} of Zurich?

Mr. ~~Chairman~~ Moog: We are getting into Smith's myth and I am sure that is going to be quite a subject.

Mr. Shibley: In any event, you have already described them as being very high officials in a good-sized ~~bank~~ bank?

Mr. Moog: Right.

Mr. Shibley: And you were in a very large conference room?

Mr. Moog: Correct.

Mr. Shibley: All right. You said at one point you got off on conversation with one of these bankers.

Mr. Moog: Yes.

Mr. Shibley: At what point of time referable to the overall meeting did this happen?

Mr. Moog: We sat together, I suppose, for about ten minutes or thereabouts and the Premier seemed to be talking to this one gentleman rather intensely and I think they hit it off very well, and the two of us were more or less just sitting there listening to that conversation and I think I made a comment about something, the room or so on. I stood up and walked towards the window. The other gentleman went with me.

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PLG

(Mr.--Moog)--

Mr. Shibley: So that you invited this other gentleman by this comment to move off to another area of the room?

Mr. Moog: Well, I don't know whether I did that or not but ~~any~~

Mr. Shibley: By your words and by your actions ~~any~~

Mr. Moog: I don't even know whether we were still ~~was~~ sitting at that moment or standing. I really can't ~~be~~ recall exactly, but ~~wex~~ were on one end of the room together and then, nevertheless we ~~was~~ separated. The Premier and the one gentleman were on one end and the other gentleman and I were on the other end of the room.

Mr. Shibley: What I want to know Mr. Moog is the separation took place at your instance?

Mr. Moog: It could have easily been, yes.

Mr. Shibley: All right. You got the one banker off onto ~~the~~ another area of the room, somewhat separated from where the Premier was talking to the other member of the bank. Is that correct?

Mr. Moog: That is right.

Mr. Shibley: And did you then converse with the one banker yourself?


Mr. Moog: I did yes.

Mr. Shibley: And what was the subject of that conversation? Well, first of all, did you converse in what language?

Mr. Moog: In German.

Mr. Shibley: Was there a reason for your conversing in German?

Tape H 1374 follows



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M.R.

~~(Mr. Shibley)~~

~~Is there a reason?~~

~~Mr. Shibley: Was there a reason for your~~

~~moving off to German?~~

~~Mr. Shibley: Was there a reason for your~~

Mr. Moog: It was easier for him and for me.

Mr. Shibley: Was there a reason for your to move off to another area of the room?

Mr. Moog: Well, it just ~~was~~ happened.

Mr. Shibley: I see. It hadn't to do with the fact that you wanted to be separated from where the Premier was having discussion?

Mr. Moog: Well, I can't really recall what the motive was at that time. It just happened. It was a very informal meeting. We were in our street clothes. We were either sitting or standing and - well, it was a separation of the four of us.

Mr. Shibley: I want your evidence clear in this respect, Mr. Moog. Are you saying that it was not your purpose, in speaking in German and in moving to another area of the room, to effect some separation and to prevent an awareness on the part of the Premier as to the subject of your conversation with the other banker?

Mr. Moog: I thought the Premier and that gentleman were getting along quite a well and I just ~~wondered~~ ^{wondered} off with the other gentleman to the ~~windxxx~~ window.

Mr. Shibley: You haven't answered my question.

Mr. Moog: I can't quite follow what you are trying to ~~say~~

Mr. Shibley: I want to know whether, when you moved off with the second gentleman to another area of the room, and spoke to him in German, it was your purpose in doing these things to prevent the Premier from being aware of the nature of your conversation?

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M.R

Mr. Moog: I wouldn't put it quite that way,

Mr. Shibley:

Mr. Shibley: Well, how would you put it?

Mr. Moog: It was a normal separation of four people.

But, if your question is whether I did ask about the Hydro building in German, yes, I did.

Mr. Shibley: No, that's not - I haven't come to that yet. I just want to know whether you, in a calculated way, arranged to have the discussion in German and separated from the Premier in order to prevent him being aware of what you were discussing?

Mr. Moog: Mr. Shibley, I do things rather instinctively and I think I did that instinctively, too. I just wandered off with the other gentleman.

Mr. Shibley: In other words, your evidence is that it was not related to the purpose I've mentioned?

Mr. Finlayson: A calculated attempt to separate the two conversations?

Mr. Shibley: Yes. A calculated attempt to prevent the

Mr. Moog: ~~I don't call it,~~ ~~a~~ calculated attempt - no.

Mr. Shibley: Well, any effort - was it part of your effort to make sure the Premier wasn't aware of what you were conferring about?

Mr. Moog: I don't think that that was the purpose of wandering off.

Mr. R.G. Hodgson: I think the witness has already testified that they were more familiar in their native language, which is German.

Mr. Shibley: I realize that, Mr. Hodgson, but I think I'm into an area that may be important to some people. I want to know from this witness whether he accidentally had the discussions in another area of the room and in German, or whether he purposely arranged things in that way.

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Mr. Moog: I don't think I had any ~~purpose~~ in mind at that moment. I think we just wandered off.

Mr. Deans: Would you ask whether the witness would have felt it appropriate to discuss the Hydro financing at the table in English with the Premier sitting there? Because that ~~was~~

Mr. Shibley: Thank you, Mr. Deans. I think it's a very direct question.

Mr. Deans: That really is the crux of the question.

Mr. Moog: I understand your question. I think that came about ~~in~~ just in a very innocent way, when I was away with this other gentleman in our German conversation, that I asked him about general, more specific, financial conditions in Switzerland. That is how the conversation started.

Mr. Deans: May I ask ..

Mr. ~~Chairman~~ Chairman: That doesn't answer Mr. Deans' question.

Mr. Deans: Let me ask you a question. When you were sitting there talking about whatever it was that you were talking about at the table, did it occur to you that this might be an opportune moment to inquire about other things of direct concern to yourself?

Mr. Moog: As I recall it, not at that particular time. The opportunity gave itself afterwards, yes.

Mr. Deans: Well, no - that's what I'm - do you feel that looking ~~at~~ back on it, because it's difficult to recollect what you thought at the time. ~~So~~

Mr. Moog: Thank you. It really is.

Mr. Deans: Looking ~~a~~ back on it, Mr. Moog, do you feel it would have been appropriate for you to have raised a matter of private business at the table, in the round table discussion that you were having?

~~Mr. Moog: Looking back at it, I would say no and I don't think I would want to do it even then. That's quite true.~~

↓

July 24, 1973
11.40-11.45 a.m.
M.F.

H - 1375 - 1

(Mr. Deans)

~~matter of private business at the table in the round-table discussion that you were having?~~

Mr. Moog: Looking back at it, I would say no, and I don't think I would want to do it even then, that is quite truthful.

Mr. Deans: Would it have been your normal practice to have in that kind of a setting raised the matter of the financing of a building of yours?

Mr. Moog: No, sir, I don't think so, no.

Mr. Deans: Is it fair to say then that because of the separation you considered that to be an appropriate time and if there hadn't been a separation you would not have raised it?

Mr. Moog: That is quite correct, yes.

Mr. Shibley: But you have already testified, Mr. Moog, that you brought about that separation?

Mr. Finlayson: No, he did not testify that. You have been trying to get him to say that but he has not said it.

Mr. Chairman: I am not so sure he didn't make some reference, I haven't got the evidence ~~xxx~~ right in here he used the word "instinctively". M_r. Newman?

Mr. W. Newman: Just for my own clarification, just on this narrative, My understanding is this, and correct me if I am wrong Mr. Shibley or Mr. Moog, that the four of them were having a meeting and quite obviously the Premier got quite involved with one particular gentleman, quite engrossed, the other two felt out of the picture, so they were sitting there and not that deeply involved and Mr. Moog stood up and walked over and the other gentleman - maybe he was called out of the conversation because the Premier and the other gentleman were getting along well, just naturally led into conversation.

Mr. Shibley: Mr. Newman, I am sorry you have contributed an element that has never been part of this witness's testimony

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(Mr. Shibley)

that they felt out of the conversation, and that that was the reason they moved away and I am not prepared to adopt that unless this witness wants to supplement his evidence in that respect. I would like to go back and ask Mr. Moog, in light of his answers to Mr. Deans, that he did not consider it appropriate to raise the subject of private business in the presence of the Premier at that time, was that in his mind at the time he moved off with this other gentleman?

Mr. Moog: When I moved off?

Mr. Shibley: Yes.

Mr. Moog: To the best of my recollection the opportunity presented itself afterwards.

Mr. Shibley: Mr. Moog, you had told Mr. Candy on June 11 that you hoped there might be some opportunity when you made that trip to Europe to investigate financing for Hydro, did you not?

Mr. Finlayson: No, he did not.

Mr. Shibley: Well did you or didn't you?

Mr. Moog: To investigate financing in Europe? Yes, I did say that.

Mr. Shibley: Yes, you did, and this was the first such opportunity was it not?

Mr. Moog: Mr. Shibley, I have many friends over there. It ~~just~~ just presented itself after I was with this one gentleman by myself that I asked very general information about financing.

Mr. Shibley: Mr. Moog, we will get to the information in a moment. This was the first such opportunity, wasn't it?

Mr. Moog: The first time I met any business people, yes.

Mr. Shibley: Yes, and it was a great opportunity because you had the Premier with you as well and he is a very impressive figure, isn't that so?

Mr. Moog: I presume so. I think they get very many impressive figures ^{W.P. & J.G.} ~~W.P. & J.G.~~ into that bank.

H - 1375 - 3

Mr. Shibley: Yes, but you don't always have an impressive figure -----

Mr. Moog: Mr. Shibley, my friend is a very impressive figure himself in Switzerland, very impressive indeed, and I could get an appointment at that bank any time I wanted one.

Mr. Shibley: Yes, the significance however, Mr. Moog, I put to you is ^{THAT} the subject of your discussion with the other banker had to do with the Hydro head office financing?

Mr. Moog: It came to that point, yes.

Mr. Shibley: What, in fact, did you say?

Mr. Moog: The other man, in my opinion, was more of a nuts and bolts man, if I may describe it that way; and I asked him about issues being placed in Switzerland, interest rates, terms, availability of funds, and in that connection I led into whether their bank could at any future time perhaps be interested in assisting in a project which would have Ontario Hydro as a tenant.

Mr. Shibley: Yes, you actually told him, at least you asked him, whether they would be interested in a project in which Ontario Hydro would be a tenant, is that right?

Mr. Moog: Something to that effect.

Mr. Shibley: Yes, and was he aware that Premier Davis was, in fact, the head of the government of Ontario?

Mr. Moog: That gentleman? I think he would treat it just like any other issue. He was ^{(AWARE THAT THE PREMIER WAS THE} head of the government of Ontario, certainly.

Mr. Shibley: Yes, and you are now talking about building a project in which Ontario Hydro would be a tenant to this man?

Tape H - 1376 follows

July 24/73
11.45 to 11.50 am
fvk

~~(Mr. Moog)~~

~~... just like any other... and... of the...
... of the...~~

~~Mr. Shibley: ... and ... building
... of the ...~~

Is that correct?

Mr. Moog: That's right.

Mr. Shibley: And did he tell you the limits of funds that they were prepared to place on such a project?

Mr. Moog: Yes, he did.

Mr. Shibley: What did he tell you?

Mr. Moog: Twenty million dollars.

Mr. Shibley: Yes, he told you \$80 million Swiss francs?

Mr. Moog: Eighty million francs, at that time the equivalent of \$20 million.

Mr. Shibley: Twenty million ~~dollar~~ dollars; and at what rate?

Mr. Moog: At 6.5 per cent.

Mr. Shibley: And did you make notes of those terms?

Mr. Moog: I think I put those down on paper afterwards, yes.

Mr. Shibley: Did you put them down afterwards or did you put them down at the time of the meeting?

Mr. Moog: I put them down in the hotel. ~~when I was~~ When I came back to the hotel I made a short ~~notation~~ recollection.

Mr. Shibley: Was the Premier present when you made those notes?

Mr. Moog: We do have separate rooms.

Mr. Shibley: I realize that.

Mr. Moog: We are friends but not that close.

Mr. Shibley: All right, Mr. Moog. I realize you have separate rooms and I know how the suites are arranged and so on. All I want to know now is to be sure that the Premier was not aware that you had made such notes.

Mr. Moog: No, he was not.

Mr. Shibley: And those notes also form part of the content of the file which is in issue?

July 24/73
11.45 to 11.50 am
fvk

Mr. Moog: That's right.

Mr. Shibley: Is there any other information referable to the particulars of funds which would be available for the Ontario head office building that you obtained in the course of that discussion?

Mr. Moog: I'm sorry? Did —

Mr. Shibley: Were you provided with any other particulars?

Mr. Moog: Not regarding Ontario Hydro. I think that was a conversation of one or two sentences. I did get from this gentleman a prospectus which dealt with an issue the bank was involved in. You have to understand that Swiss banks act as brokerage firms as well as banks. They do underwrite issues and they often have on their counters, prospectus~~s~~ sitting there of issues either sold, or being for sale, ~~or~~ where they buy back in and ~~that~~ that sort of thing. Rather than picking ~~it~~ it up at the bank counter this gentleman provided me with a prospectus, yes.

Mr. Shibley: He gave you that prospectus as an example of the type of financing. Is that right?

Mr. Moog: As an example of the type of financing that particular bank has been involved in, yes.

Mr. Shibley: And was it information that was helpful in terms of your understanding what they would do for ~~a~~ Hydro financing?

Mr. Moog: It had nothing to do with Hydro. It was financing done in France.

Mr. Shibley: All right. No, but what I say is the information that ^{it} would provide you with, would it be information that would be useful to you in determining what kind of a transaction they would want to make?

Mr. Moog: I would say no more useful than any prospectus that you can pick up at any large bank in Switzerland. But it was the same kind and type of information, yes.

Mr. Shibley: It would be helpful in that area?

Mr. Moog: It stipulated the interest rate. It stipulated the terms. I was more or less familiar with interest~~s~~ rate and terms, but this line ~~that~~ it out in writing. ~~was not stipulated~~

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11.45 to 11.50 am
fvk

Mr. Shibley: So that to be clear again, I gather that this document was handed to you within the same room that you were meeting with the Premier.

Mr. Moog: That is correct.

Mr. Shibley: But the fact that this banker was giving you such a document, having regard for its general nature, would not indicate to the Premier that you were then discussing the funding of the Hydro head office building?

Mr. Moog: Not at all.

Mr. Shibley: It's a very general form of document.

Mr. Moog: Yes.

Mr. Shibley: But it would make him aware, of course, that you were talking about business in general, or business of some kind. Is that right?

Mr. Moog: Oh yes.

Mr. Shibley: Is that document part of the file which is in issue?

Mr. Moog: That's right.

Mr. Shibley: Did you receive a second such prospectus, or document?

Mr. Moog: I think he handed me a few of them and I can't recall whether there were two, three or four.

Mr. Shibley: And however many you received, they all form part of this particular file?

Mr. Moog: That's right. They were all the same. I believe there were one or two in German and one or two in French if I remember rightly.

Mr. Shibley: Did you elicit any further information from that banker at that time?

~~Mr. Moog: No, I did not.~~

~~Mr. Shibley: Did the banker make a request of you for any information?~~

(Tape H-1377 follows)

July 18/73
11:50-11:55 am
PLG

Mr. Moog: No. That was it.

Mr. Shibley: Did the banker ~~and~~ make a request of you for any information?

Mr. Moog: No, Sir.

Mr. Shibley: In particular, did he ask you to obtain and provide him with an annual report of Ontario Hydro and any other material that might be informative as to the affairs of Hydro?

Mr. Moog: No, Sir.

Mr. Shibley: ~~Mr.~~ Mr. Moog, you in fact obtained from Mr. Candy later, on August 30, such an annual report of Ontario Hydro.

Mr. Moog: That is quite correct.

Mr. Shibley: August 31, On your return, and did you not remit that report under cover of a letter dated September 9, 1971 to the self-same Swiss bank?

Mr. Moog: That is correct.

Mr. Shibley: So that was the purpose of your obtaining the report from Mr. Candy so that you could in turn send it on?

Mr. Moog: That was my desire to have information on Hydro yes, for that bank or any other bank or any other financial institution.

Mr. Shibley: Does that covering letter form part of the file which is in issue?

Mr. Moog: That is right.

Mr. Shibley: All right. And did you get an answer from the Swiss bank in question, referable to the receipt of that report?

Mr. Moog: That is right.

Mr. Shibley: What is the date of the response?

Mr. Moog: I don't have the file with me, but,

Mr. Shibley: It would be September -- my memory of it Mr. Moog is September 21. Would that be correct?

Mr. Moog: That could easily be.

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11:50-11:55 am
PLG

Mr. Shibley: And in that reply was any further observation made as to the Hydro head office financing?

Mr. Moog: I honestly haven't read the file lately, but I believe that the bank might have said, yes that they are looking - ~~that~~ they acknowledged the report, yes.

Mr. Shibley: And did they indicate in any sense that they would ~~study~~ ^{with you} it and be in further communication or anything to that effect?

Mr. Moog: No further communication was mentioned whatsoever. It was a very short letter just acknowledging ~~receipt~~.

Mr. Shibley: Does that letter acknowledging ~~receipt~~ receipt form part of the file in issue?

Mr. Moog: That is right, Mr. Shibley.

Mr. Shibley: All right. Now then Mr. Moog, to complete this area with you, did you also communicate with that self-same bank in November of 1971?

Mr. Moog: Yes.

Mr. Shibley: And on November 10 you wrote to that bank referable to the funding of the Hydro head office building.

Mr. Moog: If you took that date off the letter that would be the date.

Mr. Shibley: And what ^{was} ~~was the~~ the substance of that letter?

Mr. Moog: I would like to --

Mr. Finlayson: Mr. ~~Chairman~~ Chairman, I would just like to take this position that I have objected to the production of the file for the reasons which I stated, and as Mr. Shibley knows, there have been negotiations with respect to this project with a total of three financial institutions, and I have made all of those documents available to Mr. Shibley so that he knows what the contents of them are and this is as I said before an area which is very sensitive because ^{and} I don't even want to say ~~this~~ this but I feel I am compelled to tell the committee this, that at the present time there is no bond

H 1377-3

July 18/73
11:50-11:55 am
PLG

(Mr. Finlayson)

purchase agreement executed between the present financial institution which sent ~~US~~^{US} letter of commitment. There is no bond purchase agreement executed between that institution and Canada Square and accordingly the financing for this particular project hasn't been put in the form in which it ordinarily would have been placed if it had not been for the intervention of this ~~inquiry~~ inquiry. And as I said, I regard these financial contacts that Mr. Moog has^{as} being of a very sensitive area and that I with great respect, don't think that he should be examined in depth with respect to the financial dealings that he has had with them. Now^{as} I have stated, ~~where~~ the money for this particular project does not come from Switzerland; that there were overtures to this particular

Tape H 1378 follows

July 24, 1973
11.55 - 12.00 noon
M.R.

(Mr. Finlayson)

~~... stated that the money for this particular project does not come from Switzerland; that there were overtures to this particular bank; that those overtures were politely but firmly rejected.~~

There were overtures then to a second financial institution which Mr. Shibley knows about. There was no agreement made with the second financial institution. There were overtures made to the third financial institution and a letter of commitment was obtained from them but because of these proceedings, that has not been finalized. There is no bond purchase agreement.

~~Now~~ I do urge upon the committee that it is most important that Mr. Moog be protected in this area. Now, as I say, I don't see what, with great respect, it has to do with the proceedings before this committee as to where Mr. Moog finally ended up with the money.

~~I~~ I'm prepared to repeat the same offer that I made yesterday, that if somebody thinks that I'm hiding something, then I'm quite prepared to show these documents to the committee if it recesses in camera. But, with great respect, your obligation is not just to hold a public inquiry and let the chips fall where they may; with respect, there are occasions on which you have a duty to ~~me~~ protect a person who has legitimate business interests ~~and~~ Mr. Moog hasn't been accused of anything.

You are simply a fact-finding body. You are not entitled to assume that he is anything else at this stage than a perfectly respectable businessman. And I say that these types of inquiries in detail into sources of finances, which turned out to be fruitless, are simply an embarrassment to the witness and to his ability to go back to such institutions at later times.

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11.55 - 12 00 noon
M.R.

(Mr. Finlayson)

xx I don't know to what extent it would even embarrass the bank to know what offer they had made - on what terms that they were prepared to lend money to Mr. Moog, ~~but~~ I told Mr. Shibley earlier that I had no objection to his asking about the trip to Europe and to Switzerland and to the Swiss bank ~~and~~ the Premier was examined yesterday on the same subject and what took place in the bank and who, without identifying ~~the subject~~ spoke to and what the subject matter of the conversation was and the like. Now, my friend has asked Mr. Moog those same questions.

The subsequent correspondence with the bank that the Premier was not privy to in any way, in my respectful submission, is completely irrelevant.

Mr. Chairman: Mr. Finlayson, I appreciate what you are saying. As you recall, I have already requested or ordered, on behalf of the committee, the production of these letters. We are not of a mind to do any damage to Mr. Moog's business connections or to his reputation in that way and, as you say, he is not on trial here.

He is simply a witness trying to help the committee. But we do have a responsibility to look into any connection that the Prime Minister or the Premier of this province may have in regard to the assistance in obtaining these funds, ~~if this~~ ^{if this} ~~has name has been used in any way whatsoever.~~

Now, we have offered that you should delete any reference or anything that may tend to identify the recipients or the senders of those letters. I'm not so sure that the prospectus would help us in any way ~~so~~ I think it is something that we are ready to talk about and to protect Mr. Moog in every way we can, but from the evidence I've heard to date, and more ~~that~~ ^{that} may yet be forthcoming, it still appears to me that ~~the~~ what Mr. Moog may have written back and forth to those bankers, particularly if it has linked the Premier ~~with it in~~ ^{name} with it in any way, could be of relevance to this committee.

July 24, 1973
11.55 - 12.00 noon
M.R.

(Mr. Chairman)

Now, as far as this meeting in camera, I think your protection is in deleting names rather than showing the names to a committee this wide, which, if there is a leak, it becomes an embarrassment to all of us. I would rather that the names be deleted and the letters produced, rather than that the letters be produced in their present stage in camera which, when you have a secret with more than one person, as you know, it may not be a secret much longer.

~~And for that reason, I would rather the letters be produced. Now...~~

H-1379 to follow

July 24/73
12.00-12.05 p.m.
E.M.

H-1379-1

(Mr. Chairman)

~~secret with more than one person, as you know, it may not be
a secret much longer.~~

For that reason, I would rather the letters be produced and speaking as Chairman and only the spokesman for the combined decision of the committee, I don't know whether we want to meet this issue at this time, Mr. Shibley, or whether you wish to proceed?

Mr. Shibley: I ~~don't~~ ^{go on} want to ~~proceed~~ but I think because Mr. Finlayson has so frequently stated that this evidence is irrelevant and he has very forcefully said repeatedly that it is irrelevant I would like the committee now to compare the evidence, even as of this moment, with the information provided by Exhibit 67, which is the memorandum of ~~April~~ April 10, 1972, wherein Mr. Mink and Mr. Candy - (this is at a point of time subsequent to the making of submissions by all four developers made an analysis thereof, upon which ^{which} Hydro - or ^{which} was employed by Hydro to make the ~~selection~~ selection, ~~and~~ if you look at page -- the schedule between page 21 and 22 - you will note that the financing for Canada Square Corporation ^{is} is \$20 million at six and a half per cent and the balance at seven and three quarter per cent. I am going to ask Mr. Moog now whether that \$20 million at six and a half per cent, being information identical to that which he has already tabled as a matter of evidence today, was not information which you had provided to Hydro, based upon the information you had elicited on the occasion of your discussions with that Swiss bank?

Mr. Finlayson: I have no objection to asking that question of the witness, Mr. Shibley.

Mr. Moog: I had a firm and polite "no" in the

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12.00-12.05 p.m.
E.M.

H-1379-2

(Mr. Moog)

second letter I got back from the Swiss bank. That is all the letters I have coming back from that Swiss bank, excepting one further letter you might have seen from an office here in Canada. You have seen that letter, Mr. Shibley?

Mr. Shibley: Yes. I will get to that in a moment. You still haven't answered my question, however.

Mr. Moog: Certainly my ~~deal~~ ^(deal) with that bank had no hope after that last letter.

Mr. Shibley: But was the information that you were providing to Ontario Hydro, and upon which you were expecting them to make ~~an~~ an evaluation, the self-same information as you had obtained from that bank in Switzerland and on that occasion?

Mr. Moog: Mr. Shibley, I did deal with other people in Switzerland about financing; this was not the only one and whether ^{I referred -} that deal was ~~any~~

Mr. Shibley: Mr. Moog, ~~any~~

Mr. Moog: That deal was, in my opinion, no longer relevant, and therefore this could not be the information.

Mr. Shibley: Well, I just ask you one further question before I come back to that. Was \$20 million the stated limit of that bank for ~~any~~ any one loan?

Mr. Moog: Of Switzerland?

Mr. Shibley: Yes, I understand.

Mr. Moog: ~~Was I was there~~ It was explained to me.

Mr. Shibley: Yes, I understand, so that the information that you obtained was ~~at~~ that that bank ~~was~~ would only loan a limit for Swiss purposes, and that is all you were able to elicit at that time, of \$20 million on any one project? Is that right?

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E.M.

Mr. Moog: Any group of Swiss banks to any foreign country. Well, I want to just inform the committee that this isn't just unique to this one bank.

Mr. Shibley: I see.

Mr. Moog: If one wants to get money in Switzerland for Canadian purposes in this form, whatever bank one deals with ~~one~~ one is limited to \$20 million.

Mr. Shibley: Mr. Moog, there is -- I could go through the documentation within Hydro and there is repeated reference ~~to~~

Mr. Moog: I realize that.

Mr. Shibley: ~~to~~ to the fact that your financing was to be Swiss ~~and~~ this information, I just went to this document to show how late in point of time ~~it~~ it was, in fact, the ultimate brief so to speak of Hydro's ~~that~~ that you were then talking in terms of Swiss financing providing \$20 million at six and a half per cent, and the balance at seven and three-quarters, I take it, because you would have to supplement the amount you expected to receive from Switzerland?

Mr. Moog: Well, with great respect, both of those rates were at that time no longer available to me.

Mr. Shibley: I see.

Mr. Moog: Where I would get my money and which way I deal with money I just do not make a practice to tell anybody, not Hydro either. I knew that Hydro was looking for money ~~(~~) they are always in the money market ~~(~~ and I did not refer to anything specific; this was just left in as a figure X. ~~You~~ ~~then make~~

(Tape H-1380 follows)

(Mr. Moog)

~~always in the money market, and I did not refer to anything~~
~~specific. This was just left in as a figure X. When you then~~
make your deal, and when a deal is signed out, then you consider
then you replace that figure X with the proper ~~amount~~ ^{amount} and the
proper interest rate, and the proper everything.

Mr. Shibley: Mr. Moog, it is a very
interesting answer because it develops another area of questioning
for me IN THE FUTURE.

Mr. Moog: ~~I know.~~ I'M SURE.

Mr. Shibley: But, at the moment, I just
want to complete the evidence as to content of that file.

Mr. Chairman: Mr. Henderson had a question.

Mr. Henderson: I'll leave it, don't bother
about it until we get to the file.

Mr. Shibley: Just going back to that September
9 letter incidentally, is there any reference in that letter to the
- I am going to withdraw that question.

Mr. Chairman: Mr. Shibley, you know I hope
to close shortly and I hope you can come to a convenient place.

Mr. Shibley: Mr. Chairman, I intend to, I
just want to go forward to this extent; in November you had a
further exchange of correspondence referable to the Hydro financing
with that Swiss bank. Is that correct?

Mr. Moog: That is correct.

Mr. Shibley: And you wrote to them on
November the ____

Mr. Finlayson: Mr. Chairman, I am sorry to
have to take this position but I am not going to refuse to produce
the file and then have the witness examined as to what is in the
letter because obviously that defeats the entire object of the
exercise.

Mr. Chairman: Mr. Finlayson, I understand
your reason for not producing the file, and the only reason is a
matter of identification.

Mr. Finlayson: No Sir.

JULY 24, 1913
12:05 - 12:10 pm
JLP

Mr. Renwick: Mr. Chairman: I'd like to ask Mr. Finlayson two or three questions to try and narrow the precise nature of Mr. Finlayson's objections. ^{As} I understand, Mr. Finlayson, you have said that Canada Square has a letter of commitment from the intended lender of the funds.

Mr. Finlayson: That's right, which Mr. Shibley has seen. And I think he has a copy of it.

Mr. Renwick: Which I understand now ~~is~~ that ~~Mr.~~
~~Shir~~ Shibley has seen. I understand that in the normal course of
 events a bond purchase agreement would have been signed and that
 commitment gone firm.

Mr. Finlayson: That is right.

Mr. Renwick: That the intervention of the appointment of this committee affected the signing of that agreement.

Mr. Finlayson: I don't like to say anything very precise on the thing. I can only say that the bond purchase agreement in the ^{ordinary} ~~ordinary~~ course of events would have been executed by now and that I can only assume that the reluctance of the ^{financial} ~~financial~~ institution to firm the thing up is because of the fact of this committee.

Mr. Renwick: I want to make that clear that I had taken that from your earlier remarks as a statement of fact. Now, it's an assumption on your part that the reason why the bond purchase agreement had not now been signed is because of the sittings of this committee.

Mr. Finlayson: Well, I can't read their minds but I know it hasn't been signed, and I know that in the ordinary course it would have been signed by this time.

Mr. Renwick: Well, Mr. Finlayson, I'm not asking you to read their minds. Has there been any formal or informal indication from the person or corporation that gave the letter of commitment that they are ^{delaying} ~~making~~ the signing of the bon purchase agreement for any reason including the sittings of this committee?

Mr. Finlayson: Well, I am not really up-to-date on that. The last thing I had on this subject was about two weeks ago when they did deliver a draft bond purchase agreement and I am not just up-to-date as to what precisely has been happening between the solicitors. I am not one of the ones who is involved in this.

Mr. Renwick: I think then perhaps between now and the time we reconvene tomorrow we can get a very clear, defined narrowed statement of the basis objection which you are raising. I really don't think that we can deal with the problem which you have from your point of view raised on behalf of your client until the issue is narrowed. My impression yesterday, when the matter was first raised, was that it was a generalized concern that in the future Mr. Moog's dealings with European financial sources, particularly in Switzerland, would be jeopardized. As we discussed very briefly during the recess which I requested in order to have an opportunity to consider it, ~~you raised~~

(Tape H-1381 follows)



July 24/73
12:10-12:15 pm
PLG

(Mr. Renwick)

~~as an alternative way, but I am not sure if it is possible to do so.~~
~~requested an order to be made to the lender.~~
You advised me that it was ~~not~~ the bond-purchase agreement had not been signed and I certainly took it from your remarks earlier this morning that the reason the bond-purchase agreement had not been signed in the ordinary course ~~of~~ was the intervention of this committee. Now, would it be possible, Mr. Finlayson, between now and tomorrow morning for you to clarify for us the exact state and whether that apprehension is of concern; whether it is a real apprehension or whether it is part of normal financing concerns to maintain a high degree of secrecy until such time as the final document is signed under which the parties are bound?

Mr. Finlayson: I can do that.

Mr. Renwick: Thank you.

Mr. Finlayson: And I will be very happy to update myself in that regard and report back tomorrow.

Mr. Chairman: Mr. Shibley, with that ~~yes~~.

Mr. Bullbrook: No, are you going to adjourn?

Mr. Chairman: Yes, I was going to do so.

Mr. Bullbrook: I want to do something before if I might.

Mr. Chairman: ~~Yes~~ ^{Yes} Mr. Bullbrook.

Mr. Bullbrook: I don't take the same position as Mr. Renwick, although I understand the validity of his concern. I must say, from the comments of Mr. Finlayson, I thought that one of the prime motivations of the lender in holding up, so to speak, the consummation of the financial dealings between Canada Square and that ~~the~~ lender was the intervention of this committee. I took that as a fact and I find it very strange that Mr. Finlayson would now say, and perhaps I misunderstood him in the original context, but ~~he says~~ he now says that he is not up-to-date on that matter. My purpose in intervening is that I want to record my objection. We have now made a decision, and I say most respectfully to Mr. Renwick, that I appreciate very much

(Mr. Bullbrook)

that what we do now is dependent to a great extent in making that judgment on the circumstances surrounding the refusal to produce the documents, ~~the documents~~, but I want to record now my objection now that it becomes quite a paramount and evident that it is relevant to us. We have made that decision. I don't think the interest of the public is served by permitting a Speaker's Warrant to be outstanding and refused for any significant length of time. I think that really is important to us. I think the position of the Legislature as representatives of the public ~~and~~ and I don't mean to be melodramatic in that respect ~~but~~ but as Mr. Finlayson said, it is a question of the interests of Canada Square but it is also a question of the interests of the public. ~~and~~ We have to make that judgment, Mr. Chairman, and we have made the judgment, ~~and~~ you have now authorized the issuance of the warrant and, therefore, I think we should pursue and have counsel pursue at the present time his advice to us as to what should be done ~~and~~ I think delay is something that we should not abide.

Mr. Renwick: Mr. Chairman, if I may just comment briefly on that, I take it that the warrant is the formalized statement for Mr. Moog to attend and bring with him all the documents.

Mr. Chairman: The documents, right?

Mr. Renwick: All the ~~the~~ documents. The precise time for the production of the particular ~~the~~ documents ~~will~~ will await the unfolding of the evidence ~~at~~ at an appropriate time, and to a large extent we are in the hands of counsel for the committee. I think it is most important that if the ruling of the committee stands ~~and~~ and I believe it will stand ~~and~~ I see no reason to indicate that it will not stand or that my position on it will alter at the present time. If we are going to move into this kind of a situation then I think that ~~it~~ it is extremely important that ~~Canada Square~~ Canada Square assist the committee by giving us a concise accurate up-to-date statement of the apprehension, concern, fear or ~~the~~ jeopardy which he

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12:10-12:15 pm

PLG

(Mr. Renwick)

believes Canada Square will be in. I tend, having had some years ago now, reasonable amount of experience in that field, to perhaps not treat it with the same gravity that Mr.

Finlayson g. treats it in the circumstances, ~~to~~

~~the final movement of the case is a~~

~~what~~

Tape H 1382 follows

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12.15 - 12.20 p.m.
M.R.

(Mr. Renwick)

But I can't make that final assessment until we, as a committee, know precisely what that objection is. Now, I don't mean it to be phrased in the way a statement of claim is phrased, or a statement of defence, that it covers the waterfront; I want the precise nature of the concern which you, as counsel, have for Canada Square and in which Canada Square participates, as to the reason why we have to head into what none of us wish to head into, ~~the~~ some confrontation which will either delay the completion of the proceedings of the Assembly or get us into that nebulous world of what the ultimate powers of the Legislative Assembly of the Province of Ontario may be.

And I would ask therefore, that a very concise statement be made of exactly the concern of Mr. Finlayson.

Mr. Deans: Mr. Chairman, before you adjourn, I want to add to what Mr. Renwick has said. I would like that that be the first matter dealt with tomorrow; that Mr. Finlayson come before the committee at its - at the hour that we reconvene and that he put before us, as clearly as he can, the reasons why he feels that the documents that the claims ought not to be made public ought not to be made public and the implications and ~~the~~ ^{effects} of doing so.

I don't pretend to hold any great insight into what is right or what is ~~x~~ wrong and when I make decisions I make them based on things like my trust in the counsel of the committee, ~~and~~ I do think though that if there is some reason why we ought not to reveal all of the documents, then Mr. Finlayson has an obligation on behalf of his own client to make it abundantly clear to all of us what those reasons are, so that there can be no mistake and so that when we do make a final decision, if there is to be a another decision made, ~~or~~ subsequent to the decision we have already made, what further steps we may have to take that those are taken for very clear and easily understood reasons.

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M.R.

(Mr. Deans)

And that there can be no mistake the ~~day~~^{days} after that we did it on a misunderstanding. I would prefer if Mr. Finlayson, recognizing that yesterday was a heated day, would relate his feelings and judgements only to the facts, and not discuss the effects nor the problems that he and Mr. Shibley apparently were having. And I would rather that he put before us tomorrow morning at 10.00 o'clock an exact and documented statement as to why he thinks we ought not to reveal them.

At that point I am prepared to listen.

Mr. Allan: Mr. Chairman.

Mr. Chairman: Mr. Allan.

Mr. Allan: I am generally in agreement with the remarks of Mr. Renwick. I don't think I would agree with Mr. Deans. I wouldn't like to put ourselves in a straight jacket and I'm sure that we can rely upon the chairman to use his good judgement as to when this discussion should take place.

With that in mind, that would be my feelings.

Mr. Chairman: Well, Mr. Shibley was attempting to form a basis for the relevancy of these documents this morning and whether he wishes to carry that on further or not as to the relevancy, that will be up to him when we meet again tomorrow morning.

Mr. Allan: Well, I had that in mind when I said that I thought the procedures should be left in the hands of the chairman.

Mr. Chairman: But I certainly likewise endorse what Mr. Renwick has said. It's sweet reason and I hope the sweet reason can prevail here. I have made an order on behalf of the committee. At the present time, I see no reason to change that order but the moment of truth has not perhaps yet arrived.

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M.R.

(Mr. Chairman)

Now, if ~~between~~ between the time when Mr. Shibley actually asks for those productions again and I know he did before, counsel for Mr. Moog can give us more argument or more cogent argument than I have yet heard, why, our minds should be changed and I think we are open to that ~~ex~~ change. But, as I say, I haven't yet seen it nor what he has said today would indicate it would be forthcoming so I would certainly adopt what Mr. Renwick has said and let's have that *early* ---

Mr. Bullbrook: Mr. Chairman, I'm sorry, I just - and I don't want to protract or create any friction of any kind - but I don't agree with what Mr. Renwick has said. The production of documents is not concurrent with when counsel wants to ask the question. The whole purpose of having counsel is to permit him to be aware of the evidence that he wants to elicit and he must have as a foundation for his examination, all documents that we deem relevant.

~~And I say to you, frankly, I don't want to create the confrontation. I~~

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M.F.

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(Mr. Bullbrook)

And I say to you frankly I don't want to create the confrontation. I associate myself entirely with what Mr. Deans has said. I think if the matter has to arise it has to arise tomorrow. The time has come when we must know whether the file is going to be submitted to us or not.

Mr. Deans: And the reasons.

Mr. Bullbrook: Oh I am prepared to accept the reasons.

Mr. Chairman: Well you are prepared though to have ~~and~~ Mr. Finlayson make some statement? Right.

Mr. Bullbrook: Oh absolutely.

Mr. R. G. Hodgson: Mr. Chairman, my ^{quandary} ~~quandary~~ is that our counsel tells us that it is relevant, the counsel for Mr. Moog tells us that it is irrelevant, and unless we get out on to the table the information on which I would base my judgment whether it is relevant or irrelevant in front of me, I am unable to at this point ~~really~~ make up my mind, and this is the position I find myself in as a member of this committee.

Mr. Shibley: I think your point is extremely well taken, Mr. Hodgson, ^{AND} ~~and~~ that it is exactly why I did not start today by asking for the file. I had made up my mind so that this committee would not be accused of pre-judgment and in order that a proper foundation be laid, that I would take this witness ~~seriatim~~ through the documents in question, and you will have noticed that he has indicated that the file in que stion contains the following:

A couple of prospecti that were handed over at that meeting in Switzerland;

Notes of the terms of financing, being \$20 million at six and a half per cent. That compares with the exhibit I referenced being the information provided to Hydro as part of the source of funds;

He had said it contains the letter remitting the Hydro

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(Mr. Shibley)

report to the same Swiss bank that he obtained from Mr. Candy. He has said it contains the letter received by way of reply and acknowledgement; he has said that he had an exchange of correspondence in November with the self-same bank referable to the head office of Hydro.

I was about to ask him enough about the content of that letter to even be more precise as to the relevancy but so far every document that we have talked about has related, not only to the Hydro head office, but more significantly, can be in terms of the precise terms of financing, equated with the information that Canada Square had provided to Hydro and which was being part of the material considered by it.

Now even if the witness is saying - and that is what I am not sure about, that is why I said I think he has opened up another avenue of inquiry - if he is saying that that may be ~~what~~ what Hydro believed was my source and my rate, but in fact it was not, then I think that is a very important area of examination.

Mr. Finlayson: Why?'

Mr. Shibley: Because it is clear that in the memoranda of Hydro they considered the low rate from foreign sources a cogent consideration in their assessment of who should have the project. There is repeated reference to that. So I would like to know whether Canada Square, what representations Canada Square was making to Hydro in that respect and now I would like to know whether the representations had foundation in fact.

I am equally concerned to know why Mr. Candy on July 19 reported to the Commission - and this is an exhibit - that the whole of the financing was Swiss, the whole of it was Swiss, and I gather from the memoranda it is indicated that the source of that information was from Canada Square and that evidence has to be reconciled. I just can't ignore the circumstance that as of the date the Ontario Hydro Commission met to deliberate upon

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(Mr. Shibley)

this, the information provided to them as for the financing by Canada Square was Swiss financing, wholly Swiss financing, and the memorandum of April 10 indicated that the terms of part of the financing were just as this witness has stated today.

I am concerned, like you, Mr. Hodgson, to establish relevancy. I ~~may well~~ may well ^{in my view} in my view I have gone far enough ~~enough~~

Tape H - 1384 follows

(Mr. Deans)

And I don't for one moment like the idea of Mr. Finlayson repeatedly referring to our judgement and Mr. Shibley's judgement. ^{here} Mr. ~~Shibley~~ Shibley is ~~to~~ to counsel the committee, and if Mr. Shibley ~~thinks~~ thinks that it is relevant, I'm prepared to accept that. I also want to give Mr. Finlayson the opportunity to properly represent his client, which I don't frankly think he is doing by making those interjections.

Mr. ~~Chairman~~ Bullbrook: Properly!

Mr. Finlayson: Don't start giving me advice. I don't need that.

Mr. Deans: That is exactly --

Mr. Chairman: Ladies and gentlemen, we are not gaining anything by protracting this at this time. Well, now, if our reason for adjournment is to have any purpose at all --

Mr. Bullbrook: You won't permit that tomorrow. Mr. Chairman, what you have just permitted to a member of the committee; we'll start with ^{that} tomorrow.

Mr. Chairman: Well, all right, but I'm thinking that we have agreed to adjourn shortly after twelve for the purpose of a funeral service and if that is to take any precedence or regard we should leave now. So, I'm adjourning it now to meet again at ten o'clock tomorrow morning. 卐

Committee adjourned at 12:30 o'clock p.m.

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JLP

Mr. Chairman: ~~Mr.~~ Finlayson, please. You are not in this conversation.

R.G. Hodgson:

~~Mr. Finlayson~~ Mr. Chairman, I consider certain other things ~~that~~ may be relevant in those documents too. And one may ^{be further} ~~be~~ we examined to great length this morning the situation with regard to the Premier's presence in the same room with the discussion, it may well be that there is other documentation that may be relevant as to either the Premier's presence or his name being used and I would like to know that also, whether there is any such thing as that, if Mr. Finlayson is going to prepare a document for us because I think those sort of things are also relevant. And so there may be ^{whole} a host of things that I would consider relevant in that file that I am not able to judge, as I said, on this basis. And so I would put that to you, Mr. Chairman, ^{that that's} ~~as~~ a basis for my great concern at the moment.

Mr. Deans: I ~~was~~ want to say that the matter of whose judgement we trust, and the matter of Mr. Finlayson's ~~again~~ again interjecting that kind of a statement, I have no alternative but to trust the judgement of our counsel, that's why we hired him; he has seen the documents; we haven't. All ~~that~~ I said previously was that I want to give Mr. Finlayson the opportunity to present to us a complete, comprehensive statement as to why he feels we ought not to reveal it publicly. The relevance I don't doubt for a moment. I think that anything pertaining to the Hydro development is relevant for this hearing to have before it. It's simply a matter of the judgement as to whether or not Mr. Finlayson is correct in the damage that it may do to Mr. Moog and his company. And I wanted to hear that from Mr. Finlayson, to see whether or not it makes any sense ^{and} and I hate to raise it because I am the one who opposes it so strenuously all the time ^{whether or not it} would make sense to hear it "in camera". That's my ^{and} and I'm not suggesting ~~*****~~ for a moment that that would be my conclusion, only that I think we have to hear from Mr. Finlayson what his real objection is.

(Shibley)

~~stated today, I'm concerned with you, Mr. (Shibley) Hodgeson, to establish relevancy, I will, in my view, I have gone far enough~~
already with this witness. I can ask the witness one further question, which is, does the file contain any document not related to the Hydro head office building?

Mr. Finlayson: Yes.

Mr. Allan: Mr. Chairman,

Mr. Shibley: ^{I mean} of substance.

Mr. Allan: I suggest that the time is long past when we should resign, but I would just like to say this though.

Mr. Shibley: We are all guilty.

Mr. Allan: ~~Not resign!~~ I'll wait until tomorrow.

Mr. Shibley: No, no, we would like to hear you Sir.

Mr. Allan: No, no but I would have to be convinced I'm afraid that there is very much relevancy in the fact that this was to be Swiss money in the final acceptance of the contract.

thing, It Mr. Finlayson: That's the whole point, that's the whole.... [^] had nothing to do with it.

Mr. Allan: Now, I think this is very important that we should find a way of tying this in to the decision that was made by Hydro because personally, at this present time, I don't see really where it's relevant.

Mr. Finlayson: It has no relevance.

Mr. Shibley: I think in that respect, Sir, you are going to have to accept my word for it.

Mr. Finlayson: Well that's where it always ends up.

Mr. Chairman: Mr. Hodgson.

Mr. Bullbrook: We are prepared to do that,
Mr. Finlayson.

APPEARANCES

Committee members:

J.N. Allan
J.E. Bullbrook
I. Deans
M. Gaunt
L.C. Henderson
R.G. Hodgson
W. Hodgson
J.P. MacBeth (Chairman)
W. Newman
J.A. Renwick
G.W. Walker

Clerk of the committee:

Paul Moore

Committee counsel:

R.E. Shibley, QC

Assistant to committee counsel:

J.P. Bell

Ontario Hydro counsel:

Pierre Genest, QC
James McCallum, QC

Canada Square counsel:

Douglas Laidlaw, QC
Blair Cowper-Smith
G.D. Finlayson, QC

President, Canada Square Corp. Ltd.

Gerhard W. Moog

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LEGISLATURE OF ONTARIO

SELECT COMMITTEE

HYDRO HEADQUARTERS

Wednesday, July 25, 1973

WORTHINGTON ROOM

1385.
1413

H-1385-1

July 25/73
10.07-10.00 a.m.
E.M.

LEGISLATURE OF ONTARIO
SELECT COMMITTEE - HYDRO HEADQUARTERS

The committee met at 10:07 o'clock, a.m. in the members' board room.

Mr. Chairman: Ladies and gentlemen, I call the meeting to order. At this point I would ask Mr. Finlayson if he would comment on the request we made of him last evening to state his position in regard to the production of the papers that have been requested.

Mr. Finlayson: I would be very pleased to, Mr. ~~Chairman~~ Chairman. I took the trouble to have it typed out and I could distribute copies of this to members of the committee, they may have some questions to ask of me and this would make it simpler.

I guess the machine is not on. I'm sorry, what I said, Mr. Chairman, was that I have a statement here which I've typed out and I have extra copies for members of the committee, they may want to ask me some questions when I am through and this would make it easier for them.

Mr. Chairman: I think you may proceed, Mr. Finlayson.

Mr. Bullbrook: Is this going to be a dissertation by Mr. Finlayson on an assessment by us as to whether the warrant should continue to exist? Are you going to also permit - I just want to know, I have no objection - are you going to permit Mr. Finlayson to tell us the law about our powers? I just flipped over and I see we are into the Statutory Powers Procedure Act.

Mr. Chairman: I don't know what Mr. Finlayson has in mind in deference to ---

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E.M.

Mr. Bullbrook: Nobody ever knows that.

Mr. Chairman: --- in deference to him we did ask him for a statement. Now I look at this statement and it is a little longer than I expected but we didn't put any restrictions on the length of the statement. I don't think ---

Mr. Renwick: Mr. Chairman, I certainly, at least so far as the length is concerned, want to state my objection to it. I asked specifically and repeated on three occasions that I wanted a concise statement of the specific objection in as brief a form as possible.

Mr. Bullbrook: That is exactly what Mr. Renwick asked and that's why I've interrupted.

Mr. Renwick: This is an 11-page document of argumentative material which is not to the point.

How do you know that?
Mr. Finlayson: You haven't read it.

Mr. Renwick: I have had the opportunity, Mr. Finlayson, to skim through documents. When one is a member of the Legislature and receives the voluminous material that we receive, one has a happy faculty of being able to understand when there is an immense amount of padding and when, at ~~the~~ the request of the committee, a person has overstepped what the request of the committee was.

Mr. Bullbrook: Well, I am glad to hear Mr. Renwick say that because that is entirely the purpose of my interjection, because that was the purpose ~~of~~ ^{that} Mr. Renwick made clear and direct to Mr. Finlayson yesterday.

(Tape H-1386 follows)

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M.S.

(Mr. Bullbrook)

~~purpose that Mr. Renwick made clear and direct to Mr. Finlayson~~
yesterday. And that's the advice that Mr. Renwick gives Mr.
Finlayson today, ~~whether~~ whether he wants to take it from Mr. Renwick
or not.

Mr. Chairman: I agree that Mr. Renwick said that;
and, perhaps, I should have picked it up when I passed on the
message. I didn't, in the sense that I asked for this statement
this morning; I don't think I used the word "concise". I will
admit that this is much longer than I expected, but I think rather
than talking about it, I would rule that he could proceed at this
point. We will ~~have~~ know where to take our law from.

Mr. Renwick: Mr. Chairman. Mr. Chairman, we have
~~xxx~~ terms of reference of the select committee from the
legislative assembly of Ontario, and I, for one, am not interested
in dealing with Mr. Finlayson's views about the second paragraph
on page seven of his submission. For example, I'm just not, at
this point, interested in that ^{kind of} ~~that~~/argumentative nonsense.

Mr. W. Newman: Mr. Chairman, may I say something?

Mr. Chairman: Yes.

Mr. W., Newman: If we haven't finished arguing about
whether we should or shouldn't, let's get on with it.

Mr. Bullbrook: No.

Mr. W. Newman: No, I know what you're talking about.

Mr. Chairman, I know exactly what you're talking about. Let's
get on with it and let him read the statement into the record.

Mr. Bullbrook: No. Absolutely not! We're not going
to be involved in that type of fallacious argument that we will
not discuss this matter, because by the time we finish discussing
it the matter could be over with.

Mr. W. Newman: That's right.

Mr. Bullbrook: Do you want to take your responsibilities
on in that fashion? Is that what you want to do? I don't associate
myself with that.

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M.S.

Mr. W. Newman: Well, no. I wouldn't expect you to.

Mr. Chairman: Gentlemen, I have made a ruling that he should be permitted to proceed. We will each judge what he has to say with our own minds. If the ruling is to be challenged, that is fine. But I don't propose to permit any more debate on the ruling.

Mr. Finlayson: Thank you, Mr. Chairman.

Mr. Chairman: Proceed, Mr. Finlayson.

Mr. Finlayson: I have been asked by one member of the committee, at least, to give a definitive statement as to the reasons for my objection to the production of a certain file relating to abortive efforts to obtain financing for the Hydro project in Switzerland during 1971. I welcome this opportunity and recognize that one of the reasons for the confusion in the minds of the committee may be my responsibility in that I did not state my objection in broad enough terms. I was dealing specifically with the request by committee counsel for a particular file and I directed my submissions to that request. In point of fact, however, the area of my objection on the ground of relevance goes beyond this file.

Mr. Renwick: Mr. Chairman, if I may interrupt.

Mr. Chairman: Mr. Renwick?

Mr. Renwick: I want to record now that that point, at the very opening of the statement, Mr. Finlayson has deliberately chosen to enlarge the area of the question of concern to this committee. And I, Mr. Chairman, am not prepared to listen to this memorandum any further. I am not interested in challenging your ruling. That is something which is of no advantage in a committee such as this. I am simply saying to Mr. Finlayson that in my view, he has overstepped the bounds of the propriety of the matter which he was asked to submit to the committee, and Mr. Chairman, it may very well be that we may have to ask Mr. Finlayson to withdraw and to have one of the partners

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M.S.

(Mr. Renwick)

in his law firm represent Mr. Moog at this hearing ~~and~~ if he persists in the disruptive tactics to which we have been subjected. I, Mr. Chairman, have ~~not~~ spent, I would suggest, a good portion of the last several hours since we met yesterday afternoon, trying to fathom, trying in some way to get some conception of why Mr. Finlayson believes that he must come here, and in a rude, abrupt, uncontrolled fashion, represent his client. I have come to the conclusion, ~~that~~ in my mind, that it is not legitimate tactics of counsel before this committee to behave in the manner in which Mr. Finlayson has behaved, and to overstep and over reach, in my view, his role as counsel for a witness before this committee. And that's my feeling and, Mr. ~~Chairman~~ Chairman, I am simply putting it on the record. I am certainly not challenging your ruling, because one of the matters which came into my mind is that Mr. Finlayson has deliberately embarked upon an effort to divide a committee which is singlemindedly engaged in a ~~an~~ difficult problem ~~with respect to the assessment of military personnel~~

Tape H 1387 follows

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10.15 to 10.20 am
fvk

(Mr. Renwick)

.....~~Finlayson has deliberately embarked upon an effort to divide a committee which is singlemindedly engaged in a difficult problem~~ with respect to the assessment of matters referred to this committee and I certainly won't play that game.

When Mr. Finlayson gets to page 8 of his memorandum, at about the beginning of the first complete paragraph then I tend I will listen to him ^{Up/} to that point I will turn him off and devote this next few minutes to more useful purposes.

Mr. Chairman: Thank you.

Mr. Finlayson: Mr. Chairman, I don't know what I have done wrong. I have produced a piece of paper which everybody put their hand on and said "it's too long and I don't like what's in it." I'm assured then that because of the great skill ^{of} ~~that~~ the members of the committee that I am not going to read it.

Mr. Renwick: Mr. Chairman, I am not going to put up, as a member of this committee, with that nonsense from Mr. Finlayson any further.

Mr. Bullbrook: You've got to, Mr. Chairman, ~~to~~ protect us.

Mr. Chairman: Mr. Finlayson, we are not here to be reprimanded by you. You may not like our procedure, but that is too bad, but I'm afraid, we are the court on this occasion and we ask you to, and I ask you to, not get into arguments with the members of the committee on this type of thing, -

Mr. Renwick: Or with ~~your~~ counsel.

Mr. Chairman: - or with counsel, and I ~~have~~ asked you, at this point, to proceed with your reading. Mr. Renwick quite rightly has put his position on the record as he is entitled to do. Now, if you will just proceed with your statement I will appreciate it.

Mr. ~~Mr.~~ Finlayson: As Mr. Moog has already testified, ^{is} the question of financing ~~has~~ always ~~a~~ vital to any development projects and, accordingly, his contacts in the financial community, and the nature of his negotiations with that financial community, are always a sensitive area.

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fvk

(Mr. Finlayson)

Mr. Moog's and Canada Square's success in the development industry depends very greatly on their impeccable standing in the financial community. Success, if any, ~~was~~ of their past transactions to the ~~the~~ largest part has been directly attributable to outstanding financing.

The financial community, at large, is extremely sensitive privately, keeping any and all information confidential and handling matters on a very high plane with disclosure only to their few selected people in their confidence.

Mr. Moog's companies have opened up channels for Canada and have been, strictly with Mr. Moog personally, negotiating to bring many millions of dollars from the United States in this country at extremely low interest rates without^t giving away ~~a~~ any ownership to foreign controls, excepting a 10 per cent interest in one project which is, and will be repurchased, to become also Canadian-owned, making all of Mr. Moog's enterprises 100 per cent Canadian-owned. To betray this ~~type~~ type of, if you wish, self-imposed confidence would be disastrous and could be as serious as to destroy Mr. Moog's standing in the financial community.

In the very case that the committee is considering, there were, in fact, approaches made to three specific financial institutions with a view to ~~get~~ obtaining financing for this project. We have also been told by Mr. Moog, although he has not expanded upon it, that there were other dealings with other Swiss people which, again, did not result in any commitment with respect to this project.

Mr. Moog ~~is~~ has a demonstrated ability to obtain money at the lowest possible cost and he has used this ability to put himself in a position where he is more competitive in this area than any of the other major developers. His success and his financing are inextricably intertwined.

So far as the specific approach to financial institutions in this case are concerned, I or my partner, have shown to Mr. Shibley all of the records which are confirmatory of the negotiations. He also

(Mr. Finlayson)

has a letter of commitment from the American financial institution which is the present source of first mortgage funds for this particular project. This information was given to him so that he could appreciate that neither Mr. Moog, nor Canada Square, has any concern about the legitimacy of these transactions, but it is most essential that they not be disclosed as a matter of public record.

As to the matters leading up to the correspondence in question, we have heard the evidence of Premier Davis and Mr. Moog, and I need not comment on it except to say ~~that~~ there appears to be no ~~not~~ significant differences between the evidence that the two witnesses gave. The Premier ~~has~~ has stated categorically that he has not seen any correspondence which arose out of that meeting and that he has no recollection of seeing an exchange of documents at the meeting itself on Friday, August 13, 1971. Mr. Moog has stated that he picked up some prospectuses which were given to him as samples as to the kind of arrangements that the bank in question had made with other companies in Europe, and that once he returned to his hotel room in Zurich, he made some notes as to the figures that had been given to him by the bank official. Mr. Shibley has seen the notes and one prospectus in German in the file in question.

(Tape H-1388 follows)

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10:20-10:25 am
PLG

(Mr. Finlayson)

~~he returned to his hotel room in Zurich, he made some notes as to the figures that had been given to him by the bank official. Mr. Shibley has seen the notes and the prospectus in German in the file in question.~~

Mr. Moog has testified that subsequently he obtained a copy of the annual statement of the Ontario Hydro for the year ending 1970 and forwarded it to the bank, and as I pointed out in my initial submissions he then asked two questions in correspondence subsequent to this meeting, both of which were answered in the negative by the bank in question under date of November 18, 1971.

Without attempting to be too precise, one question Mr. Moog asked was if the loan could be amortized over 15 years and he was told in reply that this was not a practice understood by the Swiss people and that it would not be possible. He also asked ^{that} if the bank loan could be arranged for 15 years, would the bank be prepared to give a commitment that it would renew the loan for a further 15 years at the rates then prevailing. He was advised that the bank could give no such undertaking.

There is another letter from the bank's offices in Canada that doesn't deal with this matter at all which Mr. Shibley has seen.

I just pause there, Mr. Chairman, on the suggestion that was made that it would be possible to obliterate names and still protect Mr. Moog and I would point out that those who listened to the CTV news last night heard a commentator conclude on the basis of that fact alone, that there are only three Swiss banks that have offices in Canada, so that one piece of information was enough to cause the press to narrow the number of banks to three, and of course, if the prospectus was shown to them there wouldn't be any problem at all. The significant thing is that the feelers for the loan were politely but firmly turned down in November of 1971.

When one looks at the contract itself, it is quite apparent that there is no undertaking on the part of Canada Square

(Mr. Finlayson)

or anybody else that the money for the ~~xxxx~~ project in question is to come from Swiss sources. Mr. Moog will testify that he said repeatedly that he was on the risk to obtain the funds in question and the contract makes it clear that the risk is his and his alone. In fact, the funds as now contemplated are to come from the United States. It is quite clear that the source of funds is completely irrelevant.

Now Mr. Shibley argues in reply to the question of relevance that the terms of the proposed loan discussed by Mr. Moog on August 13, 1971, were the same terms as were recorded by Mr. Candy in memoranda subsequent to November 18, 1971 and indeed, one as late as April, 1972. He wonders why Mr. Candy would still be under that impression in view of the fact that the documents which he has seen discloses that there was no commitment from the Swiss bank, that the Premier and Mr. Moog visited and Mr. Moog has asserted that from November 18 forward he ~~eg~~ regarded that source of a loan as dead.

I have no objection to Mr. Shibley asking questions of Mr. Moog directed towards eliciting, if possible, an explanation as to why Mr. Candy was apparently under this ~~assumption~~ assumption so late in the game. I have already made it clear that I have no objection to him asking questions about the trip to the bank on August 13 and discussions that took place at that time, but what I object to is the disclosure of subsequent details of ~~negotiations~~ negotiations with this particular Swiss bank that the Premier has sworn he was not party to, and I object to any detailed examination of discussions that Mr. Moog had with other Swiss sources or, indeed, any other sources of funds in the ~~W~~ United States or Canada.

Mr. Bullbrook: I want to interrupt on a point of order, I want to clarify that point because it is not in accordance with the evidence. The Premier swore that he was not a party to any subsequent negotiations as far as he knew. As far as he knew. Let's make that clear. It is obvious that the Premier was a party

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to the original meeting, that negotiations took place at, and he wasn't aware that negotiations were not taking place, were then taking place.

Mr. Chairman: The point is well ~~ok~~ taken, Mr. Bullbrook.

Mr. Finlayson: In order to allay the suspicions of members of the Committee that there is something in the letters themselves other than as I have stated, I have made the offer that it might be proper for the members of this Committee to examine the documents in camera. If there is no precedent for this proposal, there should be, and I find some support in the language of a distinguished jurist and law reformer.

Dr. James C. McRuer in his report which led to the passing of the Statutory Powers Procedure Act, at chapter 14 on page 206, deals with procedural safeguards for the exercise of statutory powers in Ontario. His recommendation, which was not carried out in full, appears at page 213:

"The provisions of the Act should apply to all tribunals, bodies or persons ~~exercising~~

Tape H 1389 follows

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~~...and I quote: "The provisions of the Act should apply to all tribunals, boards or persons,~~

exercising judicial or administrative powers, where fair procedure..." and I repeat, "where fair procedure is required unless excluded by express language or necessary implication."

He then deals with the minimum rules of procedure and I'm particularly concerned with the conduct of hearings at Page 214.

"Provision should be made that hearings should be held in public except where (a) public security is involved; (b) intimate financial or personal circumstances may have to be disclosed; (c) hearings are by self-governing professional bodies involving professional capacity and reputation."

Of course I rely on (b). In actual fact, the Statutory Powers Procedure Act Statutes of Ontario 1971, Chapter 47, does not apply to this committee but it is to be noted that with respect to hearings under the Act, Section 9 provides and I quote:

"A hearing shall be open to the public, except where the Tribunal is of the opinion that (a) matters involving public security may be disclosed or (b) intimate financial or personal matters or other matters may be disclosed at the hearing of such a nature having regard to the circumstances that the desirability of avoiding disclosure thereof in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principal that hearings be open to the public. In which case the Tribunal may ~~may~~ hold the hearings concerning any such matter in camera."

Why is it that the committee is so afraid to meet in camera? Presumably it is because it anticipates criticism from the media. There can be no other explanation. But if this committee is properly discharging its function, it must do so in a way that does protect people like Mr. Moog from publication of this kind of material.

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There is precedent in this hearing itself for the refusal of a witness to produce material and I refer specifically to the two Globe and Mail newspaper reporters who successfully refused to produce material in their file and on the face of the record at least, without even the benefit of having shown it to counsel for the committee. I refer specifically to the transcript of these proceedings and I won't read them but they are set out in my memorandum, Mr. Chairman.

Mr. Shibley: I'd like to NOTE THAT THE transcript is at 1161-1.

Mr. Finlayson: All right.

Mr. Chairman: Let me just say there, Mr. Finlayson, again we feel that - I feel that you are taking it upon yourselves to criticize the court and I refer to this case as a court because its - well, in a sense it is a court, the highest court in the land.

Mr. Bullbrook: No

Mr. Chairman: Well, all right, but I say you are taking it upon yourself to be critical of us. We had our reasons for doing that. At that time we decided it was not relative and that is the reason we didn't press for the production and we didn't, for one minute, suggest that we regarded any right of the press as to its confidential - as to the confidentiality of its source.

Again, if you would, proceed, sir.

Mr. Finlayson: Well, am I to follow Mr. Shibley's suggestion and read the sections or may I proceed in my own way?

Mr. Chairman: Go ahead. Just continue.

Mr. Finlayson: Thank you. Now, specifically I was asked as to the status of the bond purchase agreement involving Canada Square and the American institution. The following information was given to me from the offices of Messrs. Campbell,

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Godfrey and Lewtas, who act as solicitors to Canada Square and are negotiating this particular Bond Purchase Agreement.

Through a letter late in 1972, which Mr. Shibley has seen and, I believe, has a copy, the U.S. financial institution confirmed that on December 12, 1972, the Finance Committee of its board of directors had approved the purchase of U.S. \$45,000,000 30-year notes of Canada Square, subject to completion of a Loan Agreement and Security Agreements evidencing a first mortgage on Canada Square's leasehold from Ontario Hydro and an assignment of its leaseback to Ontario Hydro, together with rentals payable thereunder, all such agreements to be satisfactory in both scope and substance to the lender's law department.

While it was considering a loan, the lender had consulted with Borden and Elliott and subsequently had appointed that firm to act on its behalf in connection with the transaction. It was agreed in February, 1973, by Borden Elliott and Campbell, Godfrey and Lewtas, that Borden Elliott would prepare the Bond Purchase Agreement and that Campbell, Godfrey would prepare the Deed of Trust and Mortgage securing the Bonds.

Pursuant to this arrangement, Campbell, Godfrey prepared the first draft of the trust deed in early March of 1963, which was sent in print on April 18, 1973. They were advised by Borden, Elliott that it prepared the first draft of the bond purchase Agreement in the middle of March, 1973 and discuss it by telephone with their client on several occasions between then and April 26, ~~when for the first time~~ a ~~new~~ draft...

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(Mr. Finlayson)

~~Bond Purchase Agreement in the subject matter of the 2011, and discuss it by telephone with their client's representative, between them and Canada 36,~~ when, for the first time, a draft was sent to the lender. Borden & Elliot had received instructions from their client that it wished to review the document before it was submitted to Canada Square. And it was only on July 5, 1973, that Borden & Elliot had received their client's comments and permission to submit a draft to the Bond Purchase Agreement to Canada Square and Campbell, Godfrey. A meeting was held on July 12, 1973, between representatives of Borden & Elliot and Campbell, Godfrey, at which the draft Bond Purchase Agreement and trust deed were discussed. It is understood that the points raised on behalf of Canada Square relating to the Bond Purchase Agreement are now being considered by the lender and Borden & Elliot. A new proof of the trust deed dated July 12, 1973 was run, giving effect to the comments of Borden & Elliot.

Campbell, Godfrey was advised by Borden & Elliot that its client does not normally take so long to review a bond purchase agreement.

It should be noted that, in subsection 2.6 of the Bond Purchase Agreement, Canada Square is being asked to covenant, agree and warrant that there are no governmental proceedings commenced or pending against it, in which an adverse decision would constitute or result in a material adverse change in the business or property of the company. This clause speaks as of the date the Bond Purchase Agreement is to be executed, as well as a condition of closing under subsection 4.1. A similar provision also appears in the opinion required to be given by Campbell, Godfrey on the completion of the purchase under clause 4.8(xii) of the Bond Purchase Agreement as follows:

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"To the knowledge of said counsel, there are no actions, suits or proceedings before any court, pending or threatened against or affecting the Company, at law or in equity, and there are no proceedings by or before any governmental commission, bureau, department, board, authority or other administrative agency or by or before any administrative officer pending or threatened against the Company which might bring into question the validity of ~~the~~ the transactions contemplated by this Agreement or which might result in any material and adverse change in the business, assets or financial condition of the Company;"

And then it goes on to deal with other things which aren't relevant here.

I can advise the committee, and Mr. Moog will confirm, that without disclosing the details of the proposed Bond Purchase Agreement, interest rates have risen since December of 1972, which makes this matter even more delicate.

That is all I have to say, Mr. Chairman.

Mr. Chairman: Thank you, Mr. Finlayson.

Mr. Bullbrook: Could counsel advise if he is going to question Mr. Finlayson. I'd like Mr. Finlayson, if he would, for me, to relate the disclosure of the file to the problems confronting counsel for both the lender and Canada Square, in connection with clause 4.8(xii) of the Bond Purchase Agreement.

Mr. Finlayson: Well, Mr. Bullbrook, what I was pointing out, and apparently I have not succeeded in making my point very effectively, is that all discussions with financial institutions are of a very delicate ~~and~~ nature, and at the present time I have no executed bond purchase agreement between the lender ~~in this~~ this particular case and Canada Square. I've read to you certain

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undertakings in covenant, which would have to be in the agreement when it is signed, and I'm not going to comment as to whether we can comply with them or not, you can form your own judgement as to that.

Mr. Bullbrook: I didn't ask, Mr. Chairman.

Mr. Finlayson: Mr. Chairman, I am getting a little sick of everybody saying that I can't talk around here when I'm asked to say something, and I'm not going to be interrupted this way.

Mr. Bullbrook: Mr. Chairman, may I point out that I didn't ask that question. I asked counsel if he would, to relate for me. You see the relevant thing here, Mr. Chairman, is whether we're going to insist upon the production of the file. And I'm purely asking counsel if he would, to bear with me in that I don't understand and I ask his explanation of how the production of the file affects the application of clause 4.8(xii) of the Bond Purchase Agreement. You see, I recognize the problem that the lawyers have, but that problem arose when this committee was constituted. I'm sorry, Mr. Finlayson, I apologize for interrupting you.

Mr. Chairman: Well, I don't think any apology is necessary. The point you've made, Mr. Bullbrook, is the point that we want Mr. Finlayson to address his attention to. And I think a lot of what he dealt with there is, as you say, the other problem was created when the committee was established. ~~Now, what relatively has the process dealt with financing.~~

Tape H 1391 follows

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(Mr. Chairman)

~~opened when the committee was established.~~ Now, what relativity has the present delicate financing with the production of the documents we have asked for?

Mr. Finlayson: All of ~~these~~ financial sources are the sources that Mr. Moog is going to have to go back to in the event that there is any difficulty in finalizing the arrangement with the present lender. And he doesn't want to go back there and ^{they} say, "Oh, yes, we know you, Mr. Moog; you stick all the stuff in the newspapers. We don't want to talk to you". What I am saying is that all of these financial ~~xxxx~~ sources, ^{the} negotiations, the letters, the identity of the parties, is all a matter ~~we~~ which is highly confidential and it has nothing to do with this committee.

Mr. Chairman: Well, now, you say it has nothing to do with the committee; I am not ^{so} sure that the financing of this building doesn't have quite a bit to do with this committee. And insofar as confidentiality is concerned we have already suggested to you that you should do everything to protect that confidentiality. Now, you referred to some commentary the other night; I didn't hear the commentary, but I would suggest that by reason of your actions here and some of your own remarks that if ~~xxxx~~ anybody has been able to make any deductions, the responsibility for that must lie on your shoulders by reason of the fact you have made such an issue out of this and by reason of the fact that perhaps you yourself have said a few things that allowed other people to make conclusions.

Mr. Finlayson: Well, I was simply trying to explain my position, ~~and~~ I have been reluctant to do it in any detail and I am trying to tell you why. You are quite right,

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(Mr. Finlayson)

the farther I am pushed the more hints I give, the more interest people have, the more likely it is going to be that in the end the source will be disclosed and then you will say, "It doesn't make any difference anyhow, everybody knows, so produce the file". This is a serious matter of principle and this committee, with great respect, doesn't seem to be approaching it that way.

Mr. Chairman: Well, I think we are trying to respect the confidentiality of it but you are making it awfully difficult for us to respect that confidentiality. Now, I can't see with editing, unless somebody is going to compare ~~xx~~ types on typewriters or something of that nature, that there will be any disclosure of sources by the production of these documents, unless, again on second ruling, of the committee it feels that names should be disclosed. I would hope and not expect that we would have to cross that second threshold but in any event we have asked for the production of these documents and in my opinion they are relative. I am not so sure whether ~~they~~ relativity at this point ~~is a relative~~.

Mr. Bullbrook: I just want to have clear in my mind, if I may; we are now on ⁽¹⁰⁾ the question of the production of the documents. I want to have clear in my mind that the response, as I understand it, of Mr. Finlayson to my question is that the production of the file really in no way affects the obligations of solicitors under that clause that he quotes to us on page 10. In no way. That clause is operative because of the coming into being of this committee, not because of production of any file.

Mr. Chairman: Mr. Genest.

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(
Mr. Genest: Mr. Chairman, I don't wish to associate myself with ~~the~~, if I may say so with respect, ~~the~~ the belligerent way in which Mr. Finlayson has made his submissions, but I do wish to associate myself because Hydro is vitally concerned to see that the financing of this building is not interfered with, with the remarks he has made as to the sensitiveness of that subject and the submissions that he has made that the committee should be very conscious of this and that if there is any way in which this committee can fulfil its functions and also keep the confidentiality of the documents, it should seek to do so.


And if I may just address myself to the last remark of Mr. Bullbrook; as I see the relevance of the clause on the bond purchase agreement, it provides an out to the present source of financing. If that out is exercised by the present source of financing, Mr. Moog may be thrown back on the former sources of financing, which may be disclosed in that file. I think that is the relevance of that.

Mr. Bullbrook: I want to compliment counsel for Hydro. I have now received an answer that I don't necessarily agree with entirely but, certainly, your answer focuses on my question and I really appreciate that very much.

Mr. Chairman: Do you know that, Mr. Genest, or is there a certain amount of speculation contained in your remark

Mr. Genest: No, well, I think that any lawyer reading this clause sees that while these proceedings are pending, the ~~lender may quite legitimately take the position~~

(Tape 1392 follows)



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(Mr. Genest)

.....I think that any lawyer reading this clause sees that, while these proceedings are pending, the lender may quite legitimately take the position that the borrower can't comply with this clause, -

Mr. Bullbrook: But Mr. Genest -

Mr. Genest: - and ^{might} tell Mr. Moog, ["] Go find ~~the~~ financing somewhere else."

Mr. Bullbrook: Mr. Genest, isn't the problem there, though, that it could well be construed by counsel for the lender that the establishment of this committee is such that he would have to?

Mr. Genest: Oh, I ~~was~~ agree.

Mr. Bullbrook: Yes.

Mr. Genest: But Moog is faced with that and Moog may lose this financing and he may have to go back to Switzerland, or to other bankers. He may be faced with the suggestion, as Mr. Finlayson has stated, "If we deal with you we get in the newspapers, so go peddle your papers." And Hydro is very concerned with this, because a failure in the permanent financing of this building could have disastrous consequences.

Mr. Bullbrook: Mr. Chairman, may I say, and I ~~mean~~ mean this quite sincerely, now Mr. Finlayson has been able to see the type of ~~rap~~ rapport that has developed between counsel and the members of this committee in the past, and the way we have been able to conduct ourselves.

Mr. Chairman: Mr. Henderson first -

Mr. Genest: May I make one additional observation, Mr. Chairman?

Mr. Chairman: Yes, Mr. Genest.

Mr. Genest: I want to support again Mr. Finlayson's suggestion. There is no suggestion in his position, as I see it, that there is anything that he wants to keep back from this committee. What he wants to do is keep ^{it} back from being blatted out in the daily press and I most strongly associate myself with the suggestion that if the committee wants to review these files and wants to satisfy itself as to the contents, it should do so in camera.

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Mr. Chairman: Mr. Henderson.

Mr. Henderson: Mr. Chairman, I have been trying to convince myself that this file is important to this committee and the evidence in there has a bearing on the Hydro building. I realize that there must be evidence in this file that was important to the builder but I'm not convinced, at this moment, that it's important to the committee. However, in order that we explore all evidence, I would support a decision of this committee to review these files in camera and, at that time, if the committee decided that it should go in the public records, I'll make my decision then in camera, or openly. I don't care. But I think I would ask the committee to consider the possibilities of revealing this file in camera.

Mr. Chairman: Thank you, Mr. ~~Deans~~ Henderson. Now, Mr. Deans and then Mr. Newman.

Mr. Deans: I'm still thinking, Mr. Chairman. It ~~is~~ must have ~~like~~ I was ~~not~~ thinking out loud.

Mr. Chairman: All right. I thought you'd tried to get my eye then. Mr. Newman. Maybe it was Mr. Renwick but we'll ~~bring~~ Mr. Newman first and then Mr. Renwick.

Mr. W. Newman: Mr. Chairman, my comments will be very brief. I would support Mr. Henderson. I do believe that there has been a lot of controversy about this file, whether it's relevant, or irrelevant, to the proceedings here. If it is ~~like~~ such a very fine situation that everybody's so concerned about it let's have a look at it in camera. If it's relevant then I think it should come before this committee publicly. If it's not relevant then I don't think we should ~~not~~ bring it forward publicly.

The other comment I would like to suggest while I'm talking, and in all due respect to the legal profession, I would hope that Mr. Finlayson could learn to confine his remarks to the points in question we're dealing with and keep away from the asides at this point in time.

Mr. Chairman: Thank you Mr. Newman. Mr. Renwick.

Mr. Renwick: Mr. Chairman, I would like to try and narrow the issue, as I see it, and try to be helpful to the committee about

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(Mr. Renwick)

it.

First of all, in my mind, ~~which~~ I am satisfied as to the relevancy of the documents in the file under consideration for the purposes of this inquiry. I asked specifically, yesterday, for the definitive reason why that file ~~should not be disclosed~~ and its contents should not be disclosed. The reason, as I understood it, was because the bond purchase agreement has not been signed.

It seems to me that the covenant of Hydro, which is the second best ~~best~~ covenant in the Province of Ontario, next after the provincial government's covenant to pay money, and, from my perusal of the agreements which have been the contract documents relating to this deal, the repayment of the money lent by any institutional lender will be paid direct, as I understand it, ~~which~~

(Tape H-1393 follows)

(Mr. Renwick)

payment of the ~~monies~~ ~~be paid directly to the institutional~~ lender by Hydro. Now there was -- it is a very clearly-known principle that it is the covenant to pay and the validity of that covenant and the credibility of that covenant which determines whether the interest or principle are paid or not; and that most of the other language in legal documents ~~are~~ ^{is} directed towards the ~~x~~ events when those monies are not paid. I think we have got to be perfectly clear that, assuming the contract documents remain in force, which I do and ~~there~~ there is no evidence before this committee at this point in time which would indicate that those documents can be set aside and which again is ~~not~~ an entirely different problem but is one which falls in the realm of the public interest, and I simply say that we must not forget that Hydro's capacity to pay is second to none because if Hydro doesn't pay, of course, the government of the Province of Ontario will pay. It either borrows the money in the normal course of the capital requirements of Hydro itself and lends it to Hydro, or it guarantees the payment ~~and~~ I can't conceive ~~under~~ ⁱⁿ circumstances in which the government of the province of Ontario would not ~~not~~ stand behind the covenant of the Ontario Hydro-Electric Power Commission; or that the Ontario Hydro-Electric Power Commission would default in the payment of the rental payments required under the agreement.

Secondly, the covenants to which Mr. Finlayson has referred in the latter part of his memorandum apply, of course, as at the date at ~~at~~ which the bond purchase agreement is signed, as at the date ~~on~~ which the deed of mortgage is signed, and as at the date on which, in fact, the monies are advanced or taken down. Those are problems which are not going to be affected by the ~~x~~production of particular documents to this committee. Now the only reason, and I cannot design to consider it as a reason, is the two-line sentence at the top of page 10

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(Mr. Renwick)

that Campbell, Godfrey was advised by Borden and Elliot that its client does not normally take so long to review a bond purchase agreement. I take it to mean that there has been no intimation of any nature or kind by the lender to Canada Square or by counsel for the lender to counsel for Canada Square that in any way the delay has been a result of the intervention of these proceedings or of anything which has taken place before these proceedings.

Now, Mr. Chairman, I want to come to the very clear problem which, I think it is fair to say, I foresaw and other members of the committee foresaw when both this question was raised and at earlier points in time about the responsibility of the committee to be fair. We, I think, have discharged that responsibility to this point. We are now at the point where we are being advised that the secrecy surrounding the financial markets and the secrecy of financial negotiations are such that if that file is produced the persons in charge of lending institutions in North America and in Europe will no longer deal with Mr. Moog or his companies; or will deal with him only with him at a disadvantage. Mr. Chairman, I recognize that that is a possibility. I say the

Tape H 1394 follows

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(Mr. Renwick)

Mr. Chairman, I recognize that that is a part of the - shall I say - the mythology of the financial markets and its advisors. The information I would suggest, Mr. Chairman, is available on the street this morning, if one wanted to walk down the street and inquire of various people, the various matters are available.

We are not an inquisitorial body or an investigative body and we do not have the resources of others to track down rumours. Indeed, there was a remark made yesterday by counsel for Canada Square, which I think came as close to disclosing the identity of the person, the bank, that was involved in that file as any that I have ever heard and it's exactly that kind of sotto voce remark or unintended remark which provides the rumours on the street.

Mr. Chairman, I simply say to the committee money is neutral, the covenant of Hydro is superb, the money will be lent to Hydro; the money will be lent to Canada Square if the contracts are involved. There will be no penalty paid other than the normal penalty that the interest rate is always left until one of the final matters to be settled and indeed seldom goes firm until the documents are actually signed and there is no credible damage which I can see to Canada Square or to Mr. Moog which is of a nature which would affect his reputation, which would affect the reputation of Canada Square when contrasted with the reputation of Canada Square, the reputation of Mr. Moog, if this committee, having decided that this information is relevant, proceeds publicly to conclude its requirements because I would assume that that would be the best endorsement which Canada Square and Mr. Moog could receive if in the light of public analysis and discussion and the report on the basis of the work of this committee the report were to be uncritical of Canada Square in any fundamental sense or uncritical of Mr. Moog.

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And, therefore, I, Mr. Chairman, consider that the public interest is not such that should require us to change the decision that we made to ask for the file and the circumstances if we were to make them applicable to this committee which would permit it hold a hearing in camera for the purpose of receiving those documents, the reasons are not within that class of reasons, which are involved in the exceptions as stated by Mr. Justice McRuer in the report on the Royal Commission.

I say that advisedly because there may very well be circumstances, either in this committee hearing, or in other committee hearings, in which such a position could be validly taken. But I would submit, Mr. Chairman, that in these circumstances the public interest of the production of relevant evidence openly and publicly is and must in this instance override the apprehended private concern of the specific - of Mr. Moog, the specific witness, before us.

I may add this addendum that I interjected at the very beginning of the hearing because I wanted to limit what we were discussing today to the specific issue before us and to record my objection to any suggestion that we are going to be faced with a ~~o.s.s.~~

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(Mr. Renwick)

~~my objection to any suggestion that we are going to be faced~~
with a series of barriers later on in our endeavour to get the evidence from Counsel for Canada Square which is, I think, implicit in the opening remarks at the point in time where I interjected to put my ~~me~~ viewpoint. I would therefore ask state Mr. ~~Mr.~~ Chairman that, from my point of view, the evidence on the basis of counsel's assessment, who is counsel for the committee, is relevant evidence. I would state my view that this committee should not meet in camera at any point in time when they are hearing evidence and that any documents which are produced in this instance should be publicly produced. It may be that there is an area in which private interest would compel the committee to sit in camera, but this, in my view, is not one, ~~and~~ I would ask the committee members to give consideration to my remarks as well as the remarks ~~that~~ other members of the committee will make on this very difficult question.

Mr. Chairman: Thank you, Mr. Renwick. Mr. Walker.
and then Mr. Deans.

Mr. Walker: Mr. Chairman, a Speaker's Warrant has now been issued to, of course, ~~to~~ Mr. Moog, ~~and~~ I have a precedent of one in front of me in which it indicates a number of things, and it says:
"To bring with you all books, documents, letters, memoranda, ~~and~~ correspondence or other material touching the matters in question. I assume this is the type of one that was sent to Mr. Moog. Now, Mr. Moog is here and ~~I~~ according to page 6 of Mr. Finlayson's report, they are prepared to produce the file such that it be examined by the committee, the only qualification being in camera. Therefore, that complies with the obligations of the warrant in the sense that it is produced, provided that the committee does receive it in camera. Now I am prepared to receive it in camera, Mr. Chairman, following along the views espoused by Mr. Deans last evening that we consider the matter in camera as a possible compromise to it. As to the question

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PLG

(Mr. Walker)

of relevance, I think we will be able to determine at that time the relevance of it; and then we will also be able to determine the importance of it from a ~~the~~ publication point of view. We will be able to formulate in our own minds if it is sufficiently relevant as to warrant the importance of publication, ~~and~~ that is, I think, the most important part of this entire argument. Mr. Shibley says that it is relevant; Mr. Finlayson says that it is irrelevant. Well, that is fine; we are left with a middle ground that is very difficult to come to a conclusion on, other than review it ourselves and formulate our own opinion ~~and~~ that is what I think we can do by doing it in camera, Mr. Chairman. We then will be able to determine whether or not it should be published. I am sure that we would take into account the considerations that have been advanced by Mr. Finlayson and the considerations that will be advanced by the committee and by the counsel during the period in camera. We mustn't forget the words of Mr. McRuer in reviewing those. I would support a motion in camera, Mr. Chairman, to receive this file.

Mr. Chairman: Thank you, Mr. ~~Walker~~ Walker. Mr.

Deans.

Mr. Deans: Thank you, Mr. Chairman. I want first to deal with Mr. Walker's statement. I did not say that I supported ~~the meeting~~ ^{meeting} ~~in camera~~. What I did say was that I wanted the counsel for Canada Square to provide us with the reasons why he felt, first of all, that the documents that we are requesting are not relevant; and secondly to provide reasons why he felt that they would be, if they were revealed publicly, ~~they would be a~~ ^{they would be a} ~~damaging to Mr. Moog's business interests, and~~ that, having heard those reasons, I would then be prepared to consider whether or not a meeting in camera ought to be held. I want to make that clear because I have long believed that meetings of public bodies should be public meetings ~~and~~ I recognize of course that there are occasions when it might be necessary to hear evidence without the benefit of public

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(Mr Deans)

disclosure, ~~and~~ I wanted to understand clearly what it was that the counsel for Canada Square was objecting to.

I want to begin by saying that ~~that~~ the principle that we operate under and it is a principle that

Tape H 1396 follows

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H-1396-1

(Mr. Deans)

~~objecting to the principle that the principle~~
~~that we operate under and it is a principle that is referred to~~
by the counsel for Canada Square, is the principle that hearings be open to the public and that that is stated on page 7 of the Canada Square counsel's submission, Article (b), in which it says: "Intimate financial or personal matters or other matters may be disclosed at the hearing of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public".

I have to make a decision whether the interests affecting Mr. Moog are sufficient to outweigh the interests of maintaining what is ~~the~~ ^{the} principle of the Legislature, stated in McRuer, of adhering to the ~~xxx~~ principle that hearings be open to the public. I've read Mr. Moog's counsel's statement and the only area in which he makes reference to this is in the area of the ~~affect~~ ^{effect} of this hearing on the negotiations currently being carried out. He makes reference on page 10 to an article within the bond purchase agreement in which he states that ^{there} may well be a problem with the bond purchasing company that they are dealing with as a result of this hearing going on.

I want to say that I don't think at this point, at least not in my mind, that there is any question about the relevance of the material, I think it is evident that the material is relevant; it deals directly with the meeting between Mr. Moog and the company in Switzerland, at which the Premier of Ontario was present. And it deals with matters

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(Mr. Deans)

that are directly referenced by the Ontario Hydro in their submissions internally with regard to the desirability of choosing Canada Square as the company to do the development.

I don't see in the statement of the counsel for Mr. Moog in the 11 pages any indication at all of any substantiation that of the claim ~~that~~ revealing those documents, taking into consideration it may well be possible to obliterate the names or to somehow or other hide the identity of the banking interest, involved, would adversely affect Mr. Moog's ~~fin~~ future operations. I hear opinion being expressed that it may, but there is nothing in the statement which says or which points conclusively to the fact as claimed by counsel for Mr. Moog that revealing these relevant documents would affect Mr. Moog's future interests. I think that is the question we have to ask. The public interest is that all information be made available, ~~the~~ the public have to be satisfied that the hearing was conducted in such a way as to ensure them that all of the information pertinent to the agreement between Mr. Moog and the Ontario Hydro was placed before not only us but them. And I suspect, having read the statement now, having looked for the information I asked for and not finding it, that there is nothing in ~~the~~ the statement of counsel for Mr. Moog which would convince me that there is any concrete evidence that ~~to disclose~~ the documents would in any way adversely affect Canada Square or Mr. Moog.

I am still prepared to see the names taken out, but I think it is necessary at this point that we proceed as we intended to proceed and to ask that Mr. Moog be required to produce the documents and that the documents be placed before

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(Mr. Deans)

the committee publicly, because that is the responsibility
that we have been charged with, to make sure that at a public
inquiry that all matters related to or touching upon the
agreement between Ontario Hydro

(Tape H-1397 follows)

(Mr. Deans)

to make sure that at a public inquiry that all matters related to or touching upon the agreement between Ontario Hydro and Canada Square, and all matters related to and leading up to the entering into that agreement be investigated into. ~~and~~ I don't think that we can do that unless we have all of the documentation before us.

Mr. Chairman: Thank you, Mr. Deans. Mr. Allan?

Mr. Allan: Well, Mr. Chairman, I think I find myself in the same sort of quandary as has been indicated by the remarks ~~of~~ ^{of} the other members of the committee. To me, the ~~important~~ item that deserves the important consideration, in this instance, is not the meeting or anything to do with the meeting that occurred at which the Premier and Mr. Moog were present. It seems to me ~~that~~, if I understand the representation of the counsel for Canada Square, that their concern is in connection with certain correspondence or negotiations or evidence of negotiations that were carried on afterwards, and which resulted in a refusal of the funds. I think I could understand ~~the~~ why the counsel for Mr. Moog would be very anxious, or might be very anxious, that that correspondence wasn't made public and published. Now, I'm in the same position as other members of the committee - I don't know what was in the file. I have had absolute confidence in the counsel for the committee. However, really, in an instance like this, and after all, it is the committee who is going to make the decision, it's our responsibility. We have a counsel to assist us. But we are the ones who have to make the decision. ~~and~~ I think that if I had to decide what might be done, my suggestion would be that the committee meet with counsel for the purpose of determining whether or not the evidence that is in question is relevant. I don't think we should hear evidence in camera, but I find it difficult to understand why we might be criticized for meeting

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(Mr. Allan)

to determine whether or not the evidence that is in question is relevant. And that would be as far as I think we ~~xxxxxx~~ should go in camera.

Mr. Chairman: Mr. Allan, may I ask how we would decide, if we followed your procedure, whether it was relevant or not? Do you suggest that Mr. Shibley might tell us what was in those letters?

Mr. Allan: And then the committee would decide whether it was relevant or whether it wasn't.

Mr. Chairman: Well, I'm not so sure that Mr. Shibley has, other than from his own mind -

Mr. Henderson: Mr. Chairman, the solicitor or the counsel for ~~the~~ Canada Square has offered the letters to us.

Mr. Allan: No. I was thinking that we were going to see the file.

Mr. Chairman: Oh, all right. But you're suggesting in camera?

Mr. Allan: Yes.

Mr. Henderson: May have offered them to the committee in camera.

Mr. Chairman: In camera? All right. So, you are suggesting in camera. § Then if we decide they are ~~xxxx~~ irrelevant they would be produced. Is that what you're suggesting?

Mr. Allan: That's right.

Mr. Chairman: I just wanted to be clear.

Mr. Allan: But I don't think we should take evidence in camera.


Mr. Deans: Mr. Chairman, I just want to ask a question. Why would ^{we} be doing that now? We've been meeting since May. We have relied entirely on Mr. Shibley to determine the relevance of all of the evidence that has appeared before us. Why do we now, at this point in time, decide to question his ability to determine the relevance of material, simply because the counsel for Canada Square

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(Mr. Deans)

says otherwise? Mr. Shibley has brought us, if I may put it in that term, brought us from a position where we were pretty well ignorant of the circumstances ~~surrounding~~ surrounding the arrangement from May now ~~into the~~ close to the



Tape H 1398 follows

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fwk

(Mr. Deans)

~~...the circumstances are surrounding the arrangements from~~
~~May now close to the end of July.~~ We have never, at any time, had reason to question the information, or evidence, that was brought out by his questioning; or the ~~xxxx~~ relevance of the material that he's placed before us ~~xxx~~ I think, having heard the questions that he asked yesterday of Mr. Moog, and understanding that they were directly related to the information contained in the file, that he has shown, quite clearly, the relevance of the file. If we're going to start now, as a committee sitting in camera, to determine the relevance of all of the evidence that is going to be placed before us, we've got a real problem.

Mr. Bullbrook: Who is next?

Mr. Chairman: You are, if you wish it, ~~and~~ I have nobody else on the list.

Mr. Bullbrook: All right. May I say this to Mr. Deans? I'm sorry, through you to Mr. Deans. Sitting in camera doesn't test the relevance of the file. Once ~~that~~ we have decided that the file is relevant, we accept it. I suggest ~~Mr. Henderson~~, my colleague Mr. Henderson, and all other colleagues who have spoken, including Mr. Allan, have come to a conclusion that they want to accept the file. The only real question is whether we're going to accept the file in camera. I say, most respectfully to Mr. Walker, in his comments he talked about deciding whether the file is relevant once we have it in camera.

Mr. Walker: No, that's not quite right.

Mr. Bullbrook: I thought the record would show such. If it isn't, I apologize to you.

Mr. ~~W~~ Walker: The question, in camera, will allow us the opportunity to determine whether the publication is of sufficient importance to warrant it.

Mr. Bullbrook: Yes, I know you said that also.

Mr. Walker: Rather ^{the} importance of the file is of sufficient importance to ~~warrant~~ warrant publication.

Mr. Bullbrook: I'm not going to address myself as to

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(Mr. Bullbrook)

the question of whether the file is relevant or not.

Mr. Henderson: Mr. Chairman, might I ~~Jim~~, just for a minute. The part I'm interested in, Mr. Chairman, is the confidentiality ~~confidentiality~~ of the file.

Mr. Bullbrook: That's right and that's why I'm just going to say to you that I'm not going to address myself as to ~~whether~~ the file is relative ~~is~~ or not. I think we're all of one mind that the file is relevant.

Mr. Deans: We're obviously not. I wish we were. I am but others have said they don't know if it is.

Mr. Bullbrook: The point being ~~and~~ I want to have clarification because I respect, of course, the opinion of Mr. Allan as we all do so highly ~~if~~ if you accept the file in camera you are, in effect, saying the file is relevant. I haven't heard anybody yet say that they don't want to accept the file at all.

Mr. Chairman: I'm not so certain I adopt that reasoning, Mr. Bullbrook.

Mr. Bullbrook: Clarify with me; if we accept the file as evidence, we are saying, in effect, ~~that~~ ^{if} we insist on the file, I should put it that way.

Mr. Chairman: We then may reject it as evidence.

Mr. Bullbrook: I just don't follow that. I think it then, obviously, becomes a matter germane to ~~our~~ our deliberations and might well affect the recommendations that we make. However, I'm going to say this.

Mr. Chairman: All right. I see what you mean. In other words if we've seen it how can we ~~—~~

Mr. Bullbrook: Let me say this. I'm of the opinion, and I don't want to dwell upon the question of whether it's relevant or not. I'm absolutely of the opinion, on the foundation given to us yesterday in the questioning of Mr. Moog, that it has to be. It is relevant. The question, I suggest to you most respectfully, that we have to decide this morning, is ~~to~~ whether we want to make it public or not ~~and~~ I'm going to address myself ~~to~~ to that very shortly.

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Mr. Bullbrook)

I want to say this, in connection with the Statutory Powers Procedures Act, counsel for Canada Square has quite rightly brought to our attention that it has no application to ~~the~~ this hearing to begin with. But notwithstanding the application of that statute, we are guided by the principles that are put forward by that statute ^{te} and the ~~same~~ principles that were espoused by Mr. McRuer. I am taking the position that we should not receive these documents in camera because I take the position they're not intimate financial matters. I ^eharken back to what I said two days ago that there's an absolute distinction that Mr. Moog_s and Canada Square_s created_s when they dealt with Ontario Hydro_s. They're no longer dealing in private matters. They're dealing with a public commission and the financial dealings, concurrent with ~~that~~ their dealings with Ontario ~~Hydro~~ Hydro, are of their very essence in nature_s public. They are not intimate.

Frankly, there isn't anything in this entire document that's given to us this morning that creates, in my mind, any concern about the disclosure of those documents with the possible exception of the line that Mr. Renwick referred to on page.....

(Tape H-1399 follows)

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(Mr. Bullbrook)

~~disclosure of these documents with the possible exception~~
~~of the line that Mr. Rowland referred to on Page 10, where~~
counsel for Canada Square says, and I quote, "Campbell,
Godfrey was advised by Borden and Elliot that its client
does not normally take so long to review a Bond Purchase
Agreement."

Now that can be accepted by us as an intimation
that perhaps the lender is so concerned about these hearings -
about these hearings, not about the disclosure of the file,
but about these hearings that ~~then~~ they are reticent to
review the document. I frankly don't accept it. I don't
accept that as the interpretation.

Had counsel for Canada Square said to us this
morning that he is advised that counsel for the lending
institution are very concerned about these deliberations and
are assessing their commitment, then I really would have
great difficulty in coming to a conclusion that we should
~~publish these documents~~ publish these documents but there is no
assertion at all in this - in the brief presented by counsel
for Canada Square that either these hearings themselves or the
production of the file is adversely affecting the position of
Canada Square.

I take the position, sir, that we have an obligation
to see these documents. I take the position that goes without
any question that the documents are relevant and I take the
position that the warrant that is issued to produce documents
touching on this matter of its very nature and inherently says
for the public good and for the ~~the~~ public knowledge that the
very foundation of the order for us to meet, as Mr. Deans ~~has~~ has
pointed out, is that we meet as a public hearing.

I wouldn't want to have our warrant fettered in any
way as far as our acceptance of the evidence in camera and I'd
ask that we take all steps necessary now to see that the documents

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are produced to us and that we deliberate upon them in public view.

Mr. Chairman: Thank you, Mr. Bullbrook. I don't think that there is anything in our commission that requires to hold all of our meetings in public.

Mr. Bullbrook: No, I didn't mean that. I'm saying - I don't think I said that we are required to hold it in public. I said it's very inherent that this is a public hearing.

Mr. Chairman: Public hearing, right. Mr. Henderson.

Mr. Henderson: Mr. Chairman, might I question you:

If Canada Square's counsel ~~can~~^{doesn't} have the opportunity in camera to present its reasonings to the committee, if he presents them here & publicly, it's not confidential any longer. I would hope that this committee would look on this and look on the confidentiality side of it.

And I am in full agreement then if the committee decides that they be, but I don't know when the Canada Square counsel gets the opportunity without divulging the facts of what he wants as a confidential nature.

If he divulges it, Mr. Chairman, then it is public knowledge. He doesn't have an opportunity to present his side of it here, as I see it.

Mr. Chairman: Well, I'm not quite following your reasoning, Mr. Henderson: You feel that he should have a chance in camera to tell us further why these documents should be treated as confidential?

Mr. Henderson: That is my feeling.

Mr. Chairman: Well, I suppose after we have seen them if we so decide, and do look at them in camera, then he ~~with~~ might have an argument at that point why this party's - why this sentence is damaging or something of that nature...

Mr. Henderson: That's right.

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Mr. Chairman: I see the point you are making there. All right. Mr. Hodgson.

Mr. Genest: Mr. Chairman ...

Mr. Chairman: Yes, I notice you are anxious and we'll give you an opportunity, Mr. Genest, I think I'm looking - we are interested in what you have to say.

Mr. R.G. Hodgson: Mr. Chairman, I believe such a consideration has to take into view certain things. I believe that any speculation, assumption or publicised ~~conclusions~~ conclusions, before all evidence is heard, can have more than an immediate effect on anyone appearing before this inquiry as a witness.

The names of those written or letter writers to Mr. Moog or his firm in the file we have said could be deleted. The documents or contents in those files ...

Mr. Allan: Did we say that?

Mr. R.G. Hodgson: I think we have ...

Mr. Deans: Yes, we ...

Mr. Chairman: Yes, we gave them that opportunity.

Mr. R.G. Hodgson: That's my understanding.

Mr. Bullbrook: That was your ruling.

Mr. Chairman: Certainly I think that was part of what we discussed and I certainly meant to leave the understanding that they could be deleted and that is a question I personally want to come back to this morning.

? Mr. R.G. Hodgson: ~~The contents of those files and other related areas are not~~ ...

~~Mr. R.G. Hodgson:~~ H=1400 to follow

(Mr. Chairman)

~~did and that is a question I personally want to come back to this morning.~~

Mr. G. Hodgson: The contents of those files in other related areas are not confidential to the exclusion of this committee inquiry in my opinion, for the consideration in our determination or findings. Therefore Mr. Chairman, as to the possibility that it could affect the firm's future dealings in financial areas, I think it is incumbent upon the members of this committee to look at that file in camera to consider it and as to whether it is relevant or irrelevant can be a public disclosure by this committee in assessment after we have held that review of that file in camera, in my opinion. I don't think we are setting precedents for committees of the House in considering such things. I do think also that if we wish to we can ask the counsel for either of the Hydro or Mr. Moog, to attend with us in camera to make comment or to point out views to the committee in camera, but I do think that our conclusion as to whether it is relevant or whether it will be entered into as evidence of the committee can be concluded and should be concluded publicly thereafter.

Mr. Chairman: Thank you Mr. Hodgson. Mr. Gaunt.

Mr. Gaunt: Well Mr. Chairman, I just wanted to say that in my own mind I have made the determination that the file is relevant. I think that the file may contain information with respect to the Premier or it may reference the Premier. It certainly contains information and material referencing the discussions and negotiations with the Swiss bank and it was upon those discussions and negotiations that Canada Square predicated their proposal that financing for their new head office would be Swiss. It was on that information that as a part of the proposal submitted by Canada Square that Hydro made its decision to let Canada Square build its head office. Now I think that information clearly contained in the file as was sought out yesterday by our counsel places the file

(Mr. Gaunt)

as one which pertains directly to this hearing and to the consideration of this hearing and it seems to me that this committee was ~~the~~ a child of the Legislature is therefore ~~obliged~~ to protect the public interest and to that extent I think the public has a right to know what is in that file. Having said that I recognize and I qualify that by saying that we ~~are~~ have undertaken, or at least I gather ~~that~~ that the Chairman has placed that squarely on the table by indicating to the counsel for Canada Square that he and I presume other members of the committee are prepared to have the names deleted, but I am talking now about the information, aside from the names and I suggest to the committee as my own view that the information contained in those files ~~has~~ bears heavily on the matters before this committee and it is in the public interest that those files be ~~a~~ released to the committee and the information contained therein made ~~public~~ public, aside as I say from the names. I think the overriding consideration at this point is the public interest and it seems to me that we as a ~~small~~ committee have to fulfill our obligation in that regard. I think that under those conditions the file has to be produced to the committee.

Mr. Chairman: Thank you Mr. Gaunt. Mr. William Hodgson.

~~Mr. Hodgson: I am not sure that I understand the committee's~~

~~Mr. Chairman: I am not sure that I understand the committee's~~

Tape H 1401 follows

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(Mr. Gaunt)

~~be produced to the committee.~~

~~Mr. Chairman: Thank you, Mr. Gaunt. Mr. William~~

~~Hodgson?~~

Mr. Henderson: Wait a minute, Mr. ~~the~~ Chairman. To the committee? Your last remark, you said to the committee?

Mr. Gaunt: To the committee as a public forum.

Mr. Chairman: To the committee in public, I think.

Yes. Mr. William Hodgson.

Mr. Wm. Hodgson: Mr. Chairman, there have been a lot of pros and cons in the argument around this table this ~~morning~~ morning, whether the file should be disclosed or whether it shouldn't be disclosed. What's in the file; what's not in the file. We're only guessing at this time what's in the file, and I'm going to be very brief on my remarks and come right to the point. I'm in favour of holding a meeting in camera for my own ~~satisfaction~~ satisfaction to see what's in the file and what's not in the file. And I will be the last one to hold it from the public if it's in the public interest to see that file. And I'll support holding a meeting in camera for this committee to review the file and decide at that time.

Mr. Chairman: Thank you ~~very~~ very much. Now, I want a little further help from you, Mr. Genest, But just before I ask for that, I come back to Mr. Finlayson, And, once again, ask him why this document cannot be edited by yourself, by Mr. Shibley, and perhaps even Mr. Genest, in the sense that he is claiming a real interest in this too from Hydro's point of view? And then even be retyped so that we will the wording in that without the letterhead, without even perhaps so anybody could possibly read through the obliterations? Now, that's ~~Extremely~~ is the kind of offer I think the committee is ~~not~~ prepared to make. That is the offer that I have in my mind. I am fearful that this is ~~relevant~~ relevant. When I say "fearful" I believe it to be relevant. And after we

(Mr. Chairman)

view it in camera, where are we left having then decided on the relevance, and having also, perhaps, at that point having 13, 15, goodness knows how many people know the names that are there? Now, in the interest of your client -

Mr. Bullbrook: We won't know the names.

Mr. Chairman: Well, we may not know the names. ^{I suppose} But, basically, what is the matter with the suggestion that I have made? Yes, Mr. Hodgson?

Mr. Wm. Hodgson: Before we ask counsel to speak for Canada Square and also for Hydro, I think there was a remark made by Mr. Shibley in evidence the day before yesterday, saying that we would ~~stamp~~ stamp out the names. But if he ~~was~~ found it necessary, why, the names would be disclosed.

Mr. Chairman: Well, that was suggested on a second ruling.

Mr. Wm. Hodgson: It was in a very heated period during our hearing, and now whether he wishes to withdraw that remark, but the remark was made and I think the record will show it. "If necessary, why, I will disclose the names."

Mr. Chairman: Well, it was stated along this line. That if the names became relevant in the committee's mind and we would then have to cross the second threshold that I mentioned earlier, then the names could be disclosed. But that would not be without further consideration by this committee. Mr. Allan?

Mr. Allan: Well, in light of what you have just said, Mr. Chairman, I may say that I would be perfectly willing to ask our counsel, the counsel for Canada Square and the counsel for Hydro to look at the file and see if they could come up with an agreeable solution. If you think there's any possibility of that.

Mr. Shibley: Mr. ~~Shibley~~ Allan, I assure you I ~~have~~ have made every endeavour in that respect without success.

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Mr. Chairman: I don't follow that, Mr. Shibley.

You mean because of lack of co-operation from Mr. Finlayson or because there's no way of keeping the identity back?

Mr. Shibley: No, no. I don't mean the latter. I just mean that we discussed in depth really only on one day, not two, the production of the file, which was July 16, when I first became aware of its existence and when I first became aware of the information which is disclosed in that file, including the fact of the attendance at the bank. The second day was only a day intended to ask Mr. Finlayson, who had asked to think about it overnight. When I say "think about it," we had a discussion about editing the names. Actually, the discussions started ~~with~~ ^{with} his assistant, Mr. Cowper-Smith, while Mr. Finlayson was absent for a very short period; we waited upon him to return. And he said, well, he'd like to think about the idea overnight. Having thought about it, all I asked him the next day was had he made a decision, and he said, "Yes, we're not going to produce the file even with the names edited." To answer your other question, Mr. Hodgson, what I said was, I was quite prepared in the first instance to have the documents produced with the names edited that's blanked out, but that I didn't want it ~~edited~~

Tape H 1402 follows

(Mr. Shibley)

~~produced with the tape recorded, that he picked out, but~~
~~was I able to say it~~ understood by anyone that should the
name in itself become a relative matter that we were under
any restraint respecting the disclosure of the identity of
the bank in question. So that in the first instance we would
proceed that way, but, if as a matter of course, the evidence
evolved in a manner which required identification, that that
would not be treated as privileged information.

While I have the microphone, Mr. Chairman, can I
have a few words?

Mr. Chairman: Yes. Everybody is doing their best
to frustrate my question, including Mr. Allan, but I will come
back to it; but proceed.

Mr. Shibley: Well, I want the committee first of all
to understand that I remain convinced that the documents in
that file are relevant. I repudiate any suggestion that the
file contains material other than what is relevant. There was
only one letter referenced by the witness, which was a letter
in May, that he said was unrelated, May '72, and I am not going
to comment on that, but it is not, so to speak, a voluminous
file. It is a very thin file containing only those documents
which have already been referenced in evidence. Any suggestion
by anyone that this file is going to disclose matters of a
general import is ~~quite~~ quite wrong, and I think it was
demonstrated that the documents that I canvassed with the
witness to the point of the evidence yesterday, all relate to
discussions with, correspondence with, the ~~var~~ very bank which
was the bank attended by Mr. Moog, where at he discussed the
Hydro funding and received information for financing in the
very terms which continue to be those represented to Hydro
right down to -- well into the negotiation stage, So that
I remain convinced that the file is relevant and I am prepared
to satisfy this committee at any time in that respect.

The second thing I want to address myself to is this:

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PLG

(Mr. Shibley)

I think that the file that we are talking about may be a distraction to this committee from the real import of Mr. Finlayson's memorandum. I read it as an endeavour on his part to circumvent or ~~prevent~~ prevent my examining into the evidence referable to financing generally. I can tell you that I do not intend to be so circumvented. I consider that there are serious material issues referable to the overall method of funding and the negotiations leading thereto which I intend to cover with this witness over the course of the next day or two. I view the file in question to be only one element of that examination. I must tell you I haven't yet reached the point of examining the witness where the whole relevance of that file in itself will become apparent. I am quite prepared to have you wait until the whole relevance becomes apparent, ~~and~~ I am telling you at this time that I consider the memorandum to have a purpose other than the one to which all of you have directed your ~~own~~ attention. That is to say, to divert me and to, in some way, establish some form of precedent which precludes me from asking questions that I now ~~will~~ consider highly material and relevant to this inquiry. So whatever you do with that file, I think along the way its relevancy will not only be further demonstrated, but you will be led into other areas as well. I want to make it perfectly clear, therefore, that whatever this committee is going to do in terms of considering relevancy of that file, in camera or otherwise, should in no way be interpreted as

Tape H 1403 follows

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M.R.

(Mr. Shibley)

~~that this is a matter which is not to be~~
~~discussed as~~ restricting my inquiries into areas that are covered by this memorandum, wherein you will note on Page 5 that not only does he object to disclosure of the negotiations with this particular bank but he goes on and says at the bottom of the page "and I object to any detailed examination of discussions that Mr. Moog had with other Swiss sources or indeed any sources of funds in the United States or Canada."

I don't intend to be restricted in that manner unless I am specifically directed so to do by this committee.

With respect to the request made by counsel for Canada Square that it be considered in camera, I do have this to mention to all members of the committee; without in any way withdrawing from what I unequivocally believe to be the relevancy of those documents, I am on the other hand, concerned to permit Canada Square to, so to speak, purge its content of this committee by permitting the committee to receive possession of that file in any way whatsoever.

It is the content aspect of the matter which is now of dominant concern to me. In fairness to Mr. Moog, the consequences of not affording him every opportunity to purge his content are considerable and I am going to take the position with members of the committee that for that reason, and I want to be emphatic about this, and for that reason alone, am I prepared to have the file considered in camera as to its relevancy.

As I say, we would be in the curious position - I should say the committee would be in a curious position if it refused so to do than to put the question of whether Mr. Moog should be cited for contempt before the House with all the awkwardness that that entails and having brought him before the House, he be in a position to say "but I offered the committee an opportunity to receive possession of those documents and having offered them, how am I in contempt

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(Mr. Shibley)

because having once received them, if they then considered them relevant, they were free to employ them to whatever purpose they might see fit."

So, for that reason, I am counselling the committee to accede to the request of Mr. Finlayson and then I want to go on one step further; I have no views whatsoever as to whether you want to hear counsel for Canada Square and counsel for Hydro as to their views with respect to each of the documents in question. They can attend in camera, so far as I am concerned. I want it clear, however, that I do not intend to discuss in their presence, my views as to why those documents are relevant.

With the greatest respect for Mr. Finlayson and Mr. Genest, both of whom I have known for many years, I do not want to disclose the manner in which I intend to employ any of that evidence which might involve me in more disclosure of other areas of examination as well.

I am quite prepared to give the committee my views as to relevancy but I am not prepared to do it in the presence of opposite counsel.

Mr. Chairman: Thank you, Mr. Shibley. Mr. Newman.

Mr. W. Newman: Mr. Chairman, following through on some of the things that Mr. Shibley has brought up and other matters, I think sometimes when you get into a hearing like this, we have been in for three months now, I believe, approximately on these hearings and I think sometimes we get away perhaps from our terms of reference. May I refer to the first item in our terms of reference where it says, "the terms of the Agreement as they affect Ontario Hydro financially and economically sound". Mr. Chairman, I think our obligation here is to find out if the cost to Hydro and thus to the public, are fair and just, keeping in mind - and I don't think what's in this file - but Canada Square has the

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full responsibility for financing this building. And that's their responsibility as set out in the Agreement, they have received according to the evidence that has been produced here, ~~no further evidence has been produced~~

H-1404 to follow

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fvk

Mr. W. Newman)

... their responsibility as set out in the agreement. They have received, according to the evidence that's been produced here, funds from Swiss sources, so that, in my own mind, Mr. Shibley says they are relevant, I'm not sure that they are, or not, in my own mind and thus I would like to see us proceed to deal with these in camera as was suggested before.

Mr. Chairman: All right.

Mr. Henderson: Mr. Chairman.

Mr. Chairman: Yes, Mr. Henderson.

Mr. Henderson: I have enjoyed the argument put up by all members of the committee and, of course, I do disagree with several of them. I, at this moment, still stand by my former remarks and, if it's required, I would move that this committee meet in camera to consider ~~it~~ this file.

Mr. Chairman: I regard that ~~is~~ a motion and we'll take it as such. However, I don't want to be frustrated from my own question. Mr. Finlayson, is there any reason why you can't do as I'm suggesting?

Mr. Finlayson: Mr. Chairman, as to the documents that you are presently objecting to the production of in this file, ~~there is a~~ the prospectus in there that I gather, Mr. Shibley, contrary to what you were just saying, is not too relevant.

Mr. Shibley: No, I can refer to a prospectus. I believe I remember, I've only had, ~~the~~ literally, I think, five or six minutes with this file. My recollection ~~is that~~ ^{of} its content is not complete and I would enjoy the opportunity of examining it more closely, inasmuch as there has been so much to-do about it. I can assure the members of this committee, and counsel for Canada Square, I think you will have noted that when I examined the Premier I was very careful to use terminology that would not disclose identities without any arrangement with counsel. I'm quite prepared to examine any particular document as to the weight of its probative value against prejudicial effect. If the prospectuses, such, contained too much information in terms ~~of~~ useful for

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(Mr. Shibley)

identification, we probably can eliminate those. I cannot agree that any other documents in that file are not relevant.

Mr. Chairman: I was just thinking, in asking the question whether it was a difficult job to reproduce them. I can see reproducing a ~~prospects~~ prospectus would have some difficulties.

Mr. Shibley: ^{I can see} Also where the prospectus, as such, may be so detailed in its information as to be very awkward to edit.

Mr. Chairman: I'm suggesting that that may not be relevant, but, with the other ~~etc~~ documents, I gather they are all short, some of them in notes. Mr. Finlayson, is there any reason why ~~that is~~ the identity cannot be withheld by way of editing?

Mr. Finlayson: Mr. Chairman, I was going to answer you very shortly, when you asked the question, but Mr. Shibley has made some comments which I can't --

Mr. Chairman: Please answer my question, first and then I'll permit you to go on.

Mr. Finlayson: I can't answer it because I want to make it clear that Mr. Shibley, I don't know why he thought it was so sinister, but I made it perfectly clear that what I was objecting to was the examination ^{of} ~~with~~ Mr. Moog with respect to his dealings.

Mr. Chairman: Mr. Finlayson, will you please answer my question?

Mr. Finlayson: I will not, with respect.

Mr. Chairman: Then all right. Then I'm ruling you out of order, sir.

Mr. Finlayson: All right, rule me out of order. Nobody listens to me anyhow. You create more doubt and everybody butts in.

Mr. Chairman: Don't say we haven't listened to you. Against the wishes of some of the committee, we listened to you while you proceeded with this document. Now, I can't help it if the effect on the committee wasn't what you had hoped it would be but you did read an 11 page document. Don't tell me we don't listen to you, Mr. Finlayson. I've been asking a question for --

Mr. Finlayson: You won't listen to me now and I'm trying to answer your ~~ask you~~ question.

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Mr. Chairman: You were going to answer it after you had made some other remarks on another topic and I said I would —

Mr. Finlayson: It's not on another topic. It's all about what's to happen in ^{Canada} ~~Canada~~ and what Mr. Shibley said is what he's going to insist on.

Mr. Chairman: All right, I'm simply asking you about a document which, I think, can be edited and you ~~refused~~ are refusing to answer that question for me at this time.

Mr. Finlayson: I'm not refusing to answer it, with respect.

Mr. Chairman: After you ~~had~~ made ~~some~~ remarks on another matter: Gentlemen, we have a motion.

Renwick:

Mr. ~~Finlayson~~ Mr. Chairman, before you put the motion.

Mr. Chairman: Yes, if you wish to speak to the motion

sir

Mr. Renwick: I wanted —

Mr. Chairman: All right, Mr. Genest. ^{I've overlooked you.} Let me hear from you at this point, Mr. Genest. ~~Lucky Pierre~~

Mr. Genest: Sir, I'm just concerned with two points that came up in the debate. I have not been ~~addressing~~ ^{addressing} my representations to the committee on the basis of the relevancy of these files. My concern ~~is~~ is with publication and my concern is with the approach of the committee when it may deal, in the future, and when it's moving into the financial area, with confidential financial matters, ~~and~~

(Tape H-1405 follows)

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PLG

(Mr. Genest
XXXXXX)

~~in the future where it is moving into the financial area~~
~~with confidential financial matters~~ and I draw a distinction
between the committee considering them and the publication
of these matters. ~~and~~ I want the committee, I ask the committee,
to bear in mind that it may be dealing ^(1-1 and) and it may be setting
a course for itself now ~~applying~~ applying tests which are not
appropriate to the disclosure of financial information. I
can imagine Mr. Chairman, no case where you could prove as a
matter of certainty that disclosure of financial matters will
adversely affect a person or a borrower, because financial
people don't move in those terms. Mr. Renwick made the comment
that money is neutral, but money is also very nervous ~~and~~ ~~it~~
doesn't explain in lawyers' terms why it hasn't come or why
it has fled ~~and~~ ^o my suggestion to the committee is that the
tests that it should ~~also~~ apply in dealing with matters of
confidentiality and in applying for the test, for instance,
contained in The Statutory Powers Procedure Act, it should
ask itself this question in my respectful submission: Is
there a risk that disclosure will adversely affect the party?
And if the committee says there is a risk, then in my
respectful submission that should answer the question. It
should then endeavour to protect the source. That is the one
comment I wanted to make because I think this may come up again.

The second point I wished to make is related to
remarks by Mr. Bullbrook, which I suspect he may not have
intended to have the wide interpretation that I have put on
them, ~~where~~ ^{where} he said that anyone who deals with Ontario
Hydro does so in public, what Ontario Hydro has done,
after it's done, may be public, but I can't accept the proposition
and I don't think Hydro can, and I don't think the government
can that -- I don't speak for the government ~~etc.~~

Mr. Bullbrook: I will accept that restriction and
bring to Mr. Genest's attention that I regard this as having
been done.

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Mr. Genest: No, it isn't with respect. The financing isn't done. The lease isn't signed. The building isn't up. This is a process that is going on and you could have disclosure that would hurt the process very much; which, in my submission, would not be in public interest. Those are the points I wanted to make.

Mr. Bullbrook: I want to ~~say~~

Mr. Chairman: Excuse me. Now I do have an order.

Mr. Renwick, Mr. Hodgson, Mr. Deans; and I know you were mentioned by Mr. Genest but ~~we~~ we will ~~be~~ come back to you.

Mr. R.G. Hodgson: Mr. Chairman, will we have an opportunity to speak prior to consideration of the motion?

Mr. Chairman: Yes. This is what we are speaking to now, Sir.

Mr. Bullbrook: I want to speak to a point of order at the present time.

Mr. Chairman: All right then. Proceed, Mr. Bullbrook.

Mr. Bullbrook: I submit to you that we have no right to sit in camera ~~and~~ there has been a ruling of the Speaker already, and I am trying to get it for you, that no committee can sit in camera. The Legislature can't sit in camera with the exception of the in-camera sessions for the ~~preparation~~ of the report of a committee, ~~and~~ so that I think we should take the advice of the Speaker in this respect before we move to sit in camera.

Mr. R.G. Hodgson: I thought perhaps we should have a recess in which the Chairman and ~~we~~

Mr. Chairman: Well, certainly, I don't profess to be an expert on parliamentary law, ~~but~~ Mr. Bullbrook. I didn't realize that we didn't have that privilege.

Mr. W. Newman: Speaking to the point of order, I'd like ~~somebody~~ somebody to clarify something for me, some of ~~the~~ legal minds here. ~~Some~~ Select committees have been sitting for years and they have been sitting in camera for years on certain items and dealing with certain matters and ~~and~~

Mr. Bullbrook: I point^{ed} out the one exception^{ed}

Mr. W. Newman: I sat in a committee yesterday

that was in camera.

Mr. Bullbrook: Well, may I^{ed}

Mr. Deans: You are ~~it~~ writing a report.

Mr. Bullbrook: You are writing a report.

Mr. W. Newman: Oh, no. We were considering^{ed}

Mr. Bullbrook: If you have substance to contradict

what my impression is, why don't we just recess and the
Chairman can find out?

Mr. R.G. Hodgson: As I understand^{ed} there are two
considerations for a committee in camera; one is the preparation
of ~~the~~ starting of a committee; the other one is in writing
its report. ~~and~~ I think there are the two ~~it~~ different instances.

Mr. Allan: Mr. Chairman, I think you will remember
that I was quite careful to point out that we were meeting in
camera^{ed} only to consider whether or not something was relevant.
We weren't taking information.

~~Mr. Chairman: No. Well I think Mr. Bullbrook is
suggesting we didn't have that power even.~~

Tape H 1406 follows

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M.S.

~~(Mr. Allen)~~

~~only to establish whether or not something was relevant, we weren't taking it (in)...~~

Mr. Chairman: Well, I think Mr. Bullbrook is suggesting we don't have that power even. Mr. Renwick, were you speaking to that? I'm going to postpone debate on whether we should or not, until we find out whether we have power to. Mr. ~~Bull~~ Bullbrook has raised that question, but, Mr. Renwick, have you any remarks on whether or not we have the privilege to sit in camera?

Mr. Renwick: Mr. Chairman, on the assumption that we have the privilege to sit in camera for a justifiable reason, on that assumption I wanted to clarify this point: I am satisfied on the relationship of counsel to this committee and his advice that the matters are relevant to this committee, and I am satisfied from the extent of the questioning which took place yesterday, which reinforced the relevancy of the documents. I have many other things to do, and I don't find it particularly necessary for me to attend an in camera meeting of those members of the committee who are concerned, to talk about that problem.

And the second aspect is that I wish to go on record that the second question is not one which will be discussed in camera. And that is whether or not the matters which are under discussion fall within the kind of exception to which Mr. Justice McRuer referred at all. The reasons for Mr. Justice McRuer's report can, of course, only be gained in full by reading the six single volumes in which its published, and I don't think even in this committee we have time for that. But when the exception was made, with respect to intimate financial or personal circumstances, may ~~have~~ have to be disclosed. It was not an exception referable to the dealings of corporations and particularly financial, developmental or other corporations. So, I want to ~~mk~~ make it abundantly clear to the mover of the motion and to the others

(Mr. Renwick)

members of the committee that that is not a matter which is to be discussed in camera, and as I say, so far as the relevancy is concerned, if other members of the committee need to be reinforced in their decision on that matter, or to consider the relevancy themselves, then they don't need my assistance to come to that conclusion.

I'm delighted that counsel referred to the wider aspects of Mr. Finlayson's memorandum because that's precisely the point which gave me great concern at the opening of the session this morning. I think that we cannot overlook that this is not a question of solely looking into Hydro's negotiation of the contract. The references of the select committee are matters which, I have emphasized before, relate to the integrity of the Government of Ontario. And I think that to the extent that we were to relegate to ourselves some private right to hear in public and to decide whether to hear in camera, and then to decide whether the public is entitled to know matters about ~~we~~ which we are then fixed with knowledge, would be a super arrogation of our decision. And I venture to suggest, Mr. Chairman, and I ask the members of the committee to seriously consider this, this is a select committee. Matters of admissability of evidence, with respect to relevancy, before tribunals ~~where~~ where there are persons who are skilled in that field, are ~~g~~matters where this is a judge and a jury, are decided by the judge. ~~And in cases where the judge alone makes the decision.....~~

Tape H 1407 follows

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M.R.

(Mr. Renwick)

~~are matters where there is a judge and jury are decided~~
by the judge. And in cases where the judge alone makes the decision, his training, background and experience is the kind of training, background and experience that makes him able to decide on questions of admissibility on the basis of relevance. If he chooses to declare them inadmissible, his training is directed toward the proposition that he can exclude it from their minds. I am simply saying to my fellow members of the committee, this is a trap. I think the committee members are most unwise to affix themselves with knowledge of the file on the assumption that in some way or other they are dealing with its relevancy and then are going to be able to exclude those matters from their minds in the consideration of their decisions if it is decided not to make it public. I don't think any member of this committee, even myself, as a person with some experience in legal training, I am not prepared to accept that particular responsibility.

I am suggesting to the members of the committee that you are placing yourselves in a most invidious position. This is not a compromise. This is not a satisfactory solution to the problem. This is a trap. And I want to say again, if there is a legitimate discussion as to whether or not one of the McRuer exceptions applies to this matter, then that is a matter we can publicly discuss here.

I don't conceive that the exception of intimate, financial, or personal circumstances may have to be disclosed was ever designed to be matters which protected the private right of management of corporations not to disclose to a select committee dealing with questions affecting the government and the integrity of the government of this province to be hidden from its consideration.

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M.R.

(Mr. Renwick)

I warn the members of this committee that I will not be sitting in camera because I am satisfied as to the relevancy of the matter. If the committee wishes to vote on the other question, that is, the exception to the McRuer matter, that we will hear the evidence in camera and keep it to ourselves and consider it as part of all of the overall evidence, then that is a different and legitimate matter.

I happen to believe that if the exception applies, and I say it does not apply, then ~~that~~ we have to face up to the responsibility that we will sit in camera and keep that information entirely and totally to ourselves. I cannot conceive that Mr. Justice McRuer, dealing with administrative tribunals, and clearly and specifically recognizing that his report did not have any bearing on the Legislative Assembly of the Province of Ontario or its Committees, that we should find ourselves in that position.

We have a major public interest to discharge; not a specific statutory administrative tribunal which is set up for specific purposes and I want the members of the committee to clearly understand my position on the matter.

Mr. Chairman: Thank you, Mr. Renwick. I have asked Mr. Moore to check verbally with Mr. Lewis. Mr. Lewis indicates

Mr. W. Hodgson: I think you should check yourself.

Mr. Chairman: Well, I'm just passing this on for the time being and I will recess shortly so that anybody who wants to check, myself included, can do so directly. But that there is a difference, Mr. Bullbrook, between Select Committees and Standing Committees. ~~Standing~~ Select Committees do have that power at their own discretion. Now, I don't know whether you have contrary precedent to

Mr. Bullbrook: No, I'll certainly take it upon myself to investigate during the recess.

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Mr. Chairman: You check, Mr. Bullbrook, if you

would. Now, we started to speak to this motion and I think, Mr. Renwick, that's in particular what you were doing. I would like to adjourn for perhaps 10 or 15 minutes but you didn't in your debate or your discussion deal, as I see it, with the point that Mr. Shibley raised in regard to the matter of contempt. The offer to purge himself from contempt by producing the documents in camera. Have you any comment on that?

~~Mr. Bullbrook: I have no comment.~~

H-1408 to follow

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E.M.

H-1408-1

~~(Mr. Chairman)~~

~~introducing the documents in camera. Have you any comment on that?~~

Mr. Renwick: My comment is that the issuance of a Speaker's warrant to produce before a select committee of ~~the~~ the Legislative Assembly of the Province of Ontario is not a conditional offer. He has the responsibility to produce in the circumstances in which we as a committee determine that they will be produced and it would not in my judgement be a matter which if it became before the Bar of the House or became a matter of debate ~~in the House~~ in the Legislative Assembly would be provided as an excuse for failing to obey the warrant issued by ~~the~~ the Speaker.

I am obliged to counsel for the committee as I am on so many occasions throughout this hearing, I am obliged for him raising that point so that it would be dealt with here and now and we would have it clearly in our minds in making our decision.

Mr. Chairman: I was prepared to make a suggestion on the consensus but since we have a definite motion I ~~think~~ think it leaves everybody open to speak on the motion and I have Mr. Hodgson, Mr. Deans and Mr. Bullbrook indicating they wish to speak on the motion to ~~be~~ proceed in camera, so that we will adjourn for 15 minutes. I will check with ~~the~~ Mr. ~~the~~ Lewis.

---Whereupon the committee took recess.

(Tape 1409 follows)

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---Upon resuming at 12:20 o'clock, p.m.

Mr. Chairman: Ladies and gentlemen, I call the meeting back to order. Mr. Renwick.

Mr. Renwick: I really hadn't intended to speak again, but I am still very much concerned about what is happening and I put forward nothing but a suggestion. As you know, from the time - if I can use counsel to the committee's views - that this problem surfaced, I have been trying to buy ~~some~~ some time until we have had to face up to the problem, ~~Because~~ Because I look at the end of the road and I am not particularly interested in having Mr. Moog or Mr. Finlayson before the Bar of the Assembly in October; we have an awful lot of legislative work to do, ~~and~~ It seems to me that delving into historic precedents as to whether we could rent a room in the Tower of London and confine them to that tower is fairly irrelevant at this time.

May I make this suggestion, Mr. Chairman - and I hope that counsel for Canada Square will consider this as a possible alternative ~~that~~ that the file, that we agree as a committee that the file be made available to our counsel in ~~total~~ toto, ~~that~~ that our counsel, without introducing the documents in evidence, but taking them and having them available to him for the purpose of completely preparing his examination and for the purpose of making certain that his line of questioning is complete, that he carry out his questioning of Mr. Moog. If it at the end of that questioning is still a matter which says that these specific documents, in the opinion of our counsel, need to be exhibited publicly as documents and part of the documentary record, then - you never know what a little

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H-1409-2

(Mr. Renwick)

heat taken off this question might provide a solution to it.

Now, I am not suggesting either that it will or won't, nor do I alter the view which is my view, that this is relevant, that the documents are relevant to the work of the committee, But I am content to rely on counsel's view if that is a possible acceptable way for counsel to pursue this matter and if that method of pursuing the matter were acceptable to the other members of the committee, I would ask the committee ~~to~~ to consider that. If, on the other hand, the committee wishes to reject it, then my position is as I stated it before the adjournment.

Mr. Chairman: Thank you. Let me just state that I did ~~consult~~ consult with the Speaker of the House, who was very conveniently outside the chamber here, and he drew a distinction between ~~select~~ a standing committee and a select committee and agreed that the select committee did have power to decide many of its own rules, including that of going into in camera meetings,

So, thank you, Mr. Bullbrook, I think you agree with me on that point after seeing the Speaker.

Mr. Bullbrook: Oh yes, I agree ---

Mr. Chairman: Thank you, sir.

Did you have a comment, Mr. Finlayson, in regard to the suggestion of Mr. Renwick?

Mr. Finlayson: Yes, Mr. Chairman, The suggestion made by Mr. Renwick finds favour with me, that we physically deliver the file to Mr. Shibley and that he be able to refresh his memory by looking at it and that if any questions arise out of the file, which I object to, I will object to them at that time and we can cross ~~the~~ that bridge when we come to it.

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H-1409-3

(Mr.Finlayson)

and If at the end of his examination the motion is made by
any person that the file be made available in toto,~~to~~ I mean
be put in the record formally, I will be prepared to face that
problem when I come to it as well. I am relying here on the
good faith of the

(Tape H-1410-follows)

(Mr. Finlayson)

~~the fact that I am not going to turn the file over to Mr. Shibley in the way that I have just stated, then I am of course powerless to have it returned to me.~~

the members of this committee because of course, once I have turned the file over to Mr. Shibley in the way that I have just stated, then I am of course powerless to have it returned to me.

Mr. Chairman: Mr. Finlayson I appreciate what you are saying. I think though on behalf of the committee that I must make it clear that we are as a committee of the House, charged with this hearing, entitled to have all of this information. There is to my understanding no such thing as privileged information and that Mr. Shibley is entitled to have full cooperation as he has received from the Hydro. The Hydro have just opened their files to him and as I understand it, he has had no difficulty in getting ~~the~~ information from the Hydro as I understand it to be his right to get that. Now, what disturbs me is the fact that we might have more mornings or more sessions like we have had today. There is a duty on this committee to examine these aspects. Now I am not saying that in our ~~exam~~ examination we have not at times gone astray but it is sometimes difficult to know you are off the path until you stumble a little bit and I don't think that we have gone far off the path but many of the problems have been created by situations like today or not full disclosure. Now in an ordinary court case as you know, you generally have your evidence before you start the case, but that is not the case in one of these hearings. Mr. Shibley has had a very difficult job in coming in with the committee already in action, and he at this point has to try to find evidence by taking it from people such as the Hydro and people such as yourself but he is not going beyond his rights, he is ~~not~~ not going beyond his duty when he asks you to disclose all of the information from the files. Now, regretably it may be that he will have to use some of this information at a later date and what bothers me is that you may then be objecting again just as you have done

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PLG

(Mr. Chairman)

today so although I certainly appreciate Mr. Renwick's suggestion, and certainly am one who wants to get over the present hurdle that faces us without undue delay or undue embarrassment to anybody, including Mr. Moog, I am concerned that in following Mr. Renwick's suggestion, we may be just putting off the evil day and may have to face similar situations on a day-by-day basis.

Mr. Deans: Well Mr. Chairman..

Mr. Chairman: Mr. Deans:

Mr. Deans: Without having discussed it with my colleague, I happen to think that what he has suggested makes a lot of sense. I was prepared to trust Mr. Shibley's judgment as to the relevance of the file and I ~~was~~ have trusted Mr. Shibley's judgment as to what questions ought to be asked previously and I recall I can't just pinpoint a specific instance, but I can recall him on one previous occasion during these hearings, referring to ~~the~~ document which was not put in evidence but from which he drew extracts for the ~~exhibit~~ purpose of questioning.

Mr. Chairman: Well he's done that with diaries.

Mr. Genest: Barry Brooks.

Mr. Deans: I can recall that, at least on one occasion.

Mr. Shibley: ^{the} Witbeck memorandum as to the ~~people~~ people elected by induction.

Mr. Deans: Right. So that it isn't unusual in this committee that the counsel be charged with the responsibility of reviewing a documentation and determin~~ing~~ing how to pursue the questioning and his judgment -- and he be given the opportunity to use his judgment as to what should and should not be put in evidence. If Mr. Shibley would be prepared to undertake it in the way Mr. Renwick has suggested and if the counsel for Canada Square would object only to the things he finds objectionable, then we might be able to proceed throughout the

(Mr. Deans)

remainder of the hearing without the need to disclose information which may, to use Mr. Genest's word, be a matter of risk as to Mr. Moog's future dealings. Failing that I have another -- if that is not acceptable then I certainly would want to refer again to the matter of the need to produce the documents because I still feel if we are not going to proceed along this line then ~~we~~ I want to go back to talking about the need to produce documentation.

Mr. Chairman: Well let Mr. Shibley speak. I know you have a comment Mr. Walker. Let Mr. Shibley speak. It might clarify the position.

Mr. Shibley: I think there is merit in Mr. Renwick's suggestion. I am certainly prepared to attempt it in that manner and if we reach a point where the document itself should be exhibited, I suppose

Tape H 1411 follows

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M.R.

(Mr. Shibley)

~~in that manner and if we could point where that document~~
~~itself should be exhibited if we were that would be the time~~
to put the question to the test, whether you want to consider
its production as an exhibit in camera or not. ~~and~~ If you
do decide in camera that, ~~as~~ as a document, it should not
be tabled; if you decide - or however you decide - that it
should be tabled, then we can exhibit it. ~~and~~ It may prove
very academic ~~and~~ I think that anything that we might do
to get on with this hearing, avoid any premise upon which a
citizen is jeopardized with contempt proceedings, which I
view to be a most serious nature, should be at least attempted.
On the other hand, I want to identify completely with the
chairman's remarks as to other areas of questioning ~~and~~ I
urge you again to remember that I do not consider this method
of proceeding to conclude, so to speak, the manner in which
other areas of investigation may be conducted.

~~and~~ I can't really say anything more on
that right now. I'd like to leave it at that but I want
to make it clear I am reserving my position in other areas.

Mr. Chairman: Mr. Walker.

Mr. Walker: Mr. Chairman, I don't always agree
with Mr. Renwick; ~~however~~ however, today may be an exception,
~~and~~ I think all of us would prefer to avoid the necessity
of dealing with the matter in camera and then wrestling with
the problem of publication. The most important thing, I see
here, is avoiding the prejudicial effect that may be caused
to Mr. Moog and his company or, for that matter, Hydro by
way of the publication of the material.

We are on record as a committee, as having indicated
to Mr. Finlayson that we would be prepared to receive the
file in its blocked-out form. I believe that came Monday and
there was a hope that it might be produced - or Tuesday - over
the noon-hour ~~and~~ blocking out the identity of names and so on.

July 25, 1973
12.30 - 12.35 p.m.
M.R.

(Mr. Walker)

Now, this may accomplish precisely the same end with Mr. Shibley, who already knows the names anyway or at least, the largest number of them, and he hasn't told us yet. ~~It~~ It might accomplish the same end with him having in front of him the original document and keeping mum on the information that would be ^edeliterious to the role of Mr. Moog and so on.

Now, I think this is a way of accomplishment, I am prepared to support this suggestion by Mr. Renwick and let's get the damn thing over with.

Mr. Chairman: I'll rule out that one word but, apart from that, we have been keeping pretty clean to date, Mr. Walker.

Mr. W. Hodgson: Mr. Chairman, I ~~disagree with~~ ^{I am prepared to}

~~support~~ ~~Mr. Renwick's suggestion.~~

Mr. Henderson: Mr. Chairman, ~~Mr. Renwick's suggestion~~ ^{is} ~~undebatable~~

Mr. Chairman: I'm not forgetting you have a motion ^{Do you wish to withdraw?}

Mr. Henderson: Mr. Chairman, I am in a position that I will withdraw the motion for the moment but there ~~are~~ ^{are} a couple of other understandings ~~there~~ that I want to put on the records. It would appear to me that this is only delaying the decision maybe an hour, maybe a week, I don't know how long ~~but~~ do I get the understanding that these records are not going to be filed as evidence, ^{They are} going to be presented to our counsel? And if he wants to refer to certain things it's agreed by the two lawyers?

Mr. Shibley: No, ~~he~~ I think the understanding, sir, is that I will have the document available to me to make reference to as I conduct an examination ~~to~~ to the extent that there may be excerpts that I feel should be cited to the witness, I would try to take the opportunity ^{to discuss} that with Mr. Finlayson in advance, but the decision in that respect

July 25, 1973
12.30 - 12.35 p.m.
M.R.

(Mr. Shibley)


may well have to be mine. I'm quite alert ~~any~~

Mr. Henderson: Mr. Shibley, it may be yours

to use it if you wish?

Mr. Shibley: No, ~~no~~ not the document itself.

I gather that Mr. Finlayson's prime concern is that the documents not be exhibited. My concern is as to the information they contain and the chronology ~~that~~ they establish. So that, as I say, we may be into an academic area here and I think all that is required for the moment is to proceed as Mr. Renwick suggests. The other benefit of it is that as I am examining on a document there is no better way to test the relevancy of ~~the~~



H-1412 to follow

July 25/73
12:35 - 12:40 pm
M.S.

(Mr. Shibley)

~~as I am examining on a document, there is no better way to test~~
~~the relevancy of~~ the document itself. And that's what has worried me as you've talked about going into camera, because you don't know what questions I want to ask with respect to any given document. Now, if I see some content that I think is sensitive, I think what I would do is sit down with Mr. Finlayson and discuss it with him.

Mr. ~~Werner~~ Henderson: Well, Mr. Chairman, may I continue then? I feel much the same as the other members, that we have a responsibility to the public. There's no doubt about that. But we have it in several different ways. I respect the way the hearing has been conducted and I have become concerned in recent days - not in recent days, yesterday, I'll pinpoint it. I was concerned that ~~where~~ we becoming a kangaroo court. I was concerned that every time that the counsel representing Canada Square tried - and I will admit he accelerated his position - but every time he tried to present evidence, he was cut off by you, Mr. Chairman, ~~as~~ as much as to tell we're not interested in you, we have our counsel for the committee who is presenting this case. And to me, he doesn't get a ~~strong~~ fair chance. Now, I want to register this protest at this moment and feel that as counsel representing his client that he is entitled to his say, as well as the counsel for the committee.

Now, I know the legal people will differ to me. But as a representative of the people of this province, I want to see that everyone gets a fair opportunity to place their case before this committee. Now, I still feel that we are only delaying this decision for days, but I'm willing to withdraw my motion and go along with Mr. Renwick's suggestion.

Mr. Deans: Mr. Chairman, one comment, only one comment. I bite my tongue, but we establish the method of proceeding early in the meetings. And we have been following them very, very

July 25/73
12:35 - 12:40 pm.
M.S.

(Mr. Deans)

carefully at each meeting. And what we're doing now is no different from what we did at the early going, and I'm sure Mr. Henderson can recall that.

Mr. Chairman: Well, I guess the reference is to the fact that the ~~expert~~ counsel for witnesses, it was at the discretion of this committee, and I think that is, historically, the case.

Mr. Henderson: I would hope that members of the committee would make their decisions. I would hope that they would not be run by one man of the committee. I would ~~not~~ hope it would be a committee decision.

Mr. Chairman: All right, sir. I don't profess any degree of perfection and I can often go astray with the rest of them.

Mr. R.G. Hodgson: I take grave exception to that last comment. This committee is not run by any one member of this committee, or any counsel to it. I am a member of this committee and I take great exception to that.

Mr. Chairman: I thought he was the one you were referring to, Mr. Hodgson.

Mr. R.G. Hodgson: Well, it might be, but I take great exception to that.

Mr. Chairman: Mr. Allan?

Mr. Allan: Mr. Chairman, I'm like Mr. Walker. I often agree with Mr. Renwick. He has his good moments very often.

Mr. Walker: Every now and then.

Mr. Allan: I think I like to look at the doughnut rather than the hole!

Mr. Walker: That's a very expressive remark
Mr. Bulbrook: He's our Sam Ervin!

Mr. Allan: I've been listening to all the enumeration of the pitfalls that we're going to reach. I would like to see us

(Mr. Allan)

go ahead as we have planned, and certainly with the hope that everything is going to work out splendidly. I have tremendous confidence in our solicitor's good judgement, ~~and~~ particularly in the handling of a matter such as this. I think that, Mr. Renwick, you've probably got a solution that's going to be very satisfactory and everyone should endeavour to make it work.

Walker
U W Mr. ~~Chairman~~: Well, that, no doubt, is going to work out splendidly, my problem is when!

Mr. Chairman: You are content, Mr. Henderson, then to withdraw now? I did have some others to speak to that ~~motion~~ motion, but if we're content to have it withdrawn, and I gather there is unanimity -

Mr. Henderson: I withdraw the motion, sir.

Mr. Bullbrook: I want to record the fact that there isn't unanimity. I'll be ^{quite} brief and I'm really appreciate of the intent of the suggestion itself, and I won't withdraw from the hearings. I'll stay, notwithstanding. However, the situation is that a Speaker's warrant has been issued for the production, ~~very~~

Tape H 1413 follows

July 25/73
12.00 to 12.45 pm
fvk

(Mr. Bullbrook)

~~... however, the situation is that the speaker, agent~~
~~has been asked for the production of documents to this committee~~
and not to the committee counsel. I formerly register my objection.
I take the position that the Legislature is permitting a ~~xxx~~ contempt
of its order. That's all I'll say.

Mr. Chairman: All right. I don't want ~~y~~ to buy that
in the sense that counsel is our agent and, ~~we~~ we're content to
delegate to counsel. Mr. Renwick.

Mr. Renwick: May I just make the distinction. As I
understand it, the ~~xxx~~ file will be produced in total to counsel
for the committee who is counsel for this committee so that the
documents are in the possession of this committee. The distinction
I wanted to make was whether or not the time would come that ~~we~~
~~xxx~~ Mr. Shibley would feel ~~compelled~~ compelled to say to the chairman:
"I would like this document made exhibit number 199," or ~~whatever~~
whatever the appropriate number may be. That's the distinction I
wanted to make and, I think it's at that point in time that Mr.
Shibley would give Mr. Finlayson, if he needed any; I notice that
he's pretty quick on the trigger; that that's the point in time
when the issue would come up as to the making of the document public.

Mr. Chairman: Do you want to just briefly restate your
suggestion so that there can be - so that we can all - Are we
all clear on it? All right. We're all clear then. I'm going
to rule that we have adopted the suggestion of Mr. Renwick and
we'll proceed on that way this afternoon at 2:00 o'clock.

The committee took recess at 12:42 o'clock, p.m.

APPEARANCES

Committee members:

J.N. Allan
J.E. Bullbrook
I. Deans
M. Gaunt
L.C. Henderson
R.G. Hodgson
W. Hodgson
J.P. MacBeth (Chairman)
W. Newman
J.A. Renwick
G.W. Walker

Clerk of the committee:

Paul Moore

Committee counsel:

R.E. Shibley, QC

Assistant to committee counsel:

J.P. Bell

Ontario Hydro counsel:

Pierre Genest, QC
James McCallum, QC

Canada Square counsel:

Douglas Laidlaw, QC
Blair Cowper-Smith
G.D. Finlayson, QC

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LEGISLATURE OF ONTARIO

SELECT COMMITTEE

HYDRO HEADQUARTERS

Wednesday, July 25, 1973

Afternoon session

14 14-
11/52

July 25/73
2:20 - 2:25 pm
CA

H-1414-1

LEGISLATURE OF ONTARIO

SELECT COMMITTEE - HYDRO HEADQUARTERS

The committee resumed at 2:20 p'clock, p.m. in the member's board room.

Mr. Chairman: Ladies and gentlemen, I call the meeting to order. I apologize for the delay. It had to do with the reproduction of the documents. I am not so sure they are all here yet, but Mr. Shibley tells me he is prepared to proceed. So if you would take over, Mr. Shibley.

Mr. Shibley: Mr. Moog, please.

Mr. Moog, it has been so long since you and I have had an exchange last I think I should go back and reestablish something that is basic to the examination that I want to take you through this afternoon.

You will remember that you discussed with me the meeting of June 11 with Mr. Candy, which was the first occasion on which you had to do with anyone within Hydro on this job, and you had given evidence that you had told Mr. Candy of the intended trip to Europe, put his memorandum into the context of what you had actually said to him. But I am particularly interested in your restating, or at least your confirming that as a result of that communication Mr. Candy would be aware that if the opportunity presented itself, while you were in Europe, you intended to check into the financing that would be required for the head office building. Is that correct?

Mr. Moog: I believe I stated to you that I was trying to check out financial markets; that I would have a chance to do that while in Europe.

Mr. Shibley: And you let Mr. Candy know this?

Mr. Moog : I did say that.

Mr. Shibley: Yes. Then I want to take you to the month of August, 1971, and, in order to establish a chronology for the members of the committee I will go back and remind them that it is now in evidence that on August 3 Mr. Gathercole and the Premier

H-1414-2

(Mr. Shibley)

had their first discussion referable to the head office, ~~and~~ It was on that occasion that some comment passed between them at some affair; and indication given, I gathered, to Mr. Gathercole, that he should carry forward his own thinking.

Then ~~on~~ August 13, was the date of your visit to the Swiss bank in Switzerland, in Zurich, where at you, in fact, Mr. Moog, I gathered, did take the opportunity presented on that occasion to investigate the matter of financing for the Hydro head office building as you have already indicated. Is that correct?

Mr. Moog: Money markets in general as well as an inquiry I had about the possibility.

~~Mr. Shibley: Yes. And at that occasion you received from the~~
~~bank~~

H-1415-1 follows

July 25, 1973
2.25 - 2.30 p.m.
M.R.

~~(Mr. Moog)~~

~~An inquiry I had about the possibility.~~

Mr. Shibley: And on that occasion you received from the bank the information that there was a limit of 80 million Swiss francs on any one loan?

Mr. Moog: That's right.

Mr. Shibley: And that equates with \$20 million?

Mr. Moog: At that time, yes.

Mr. Shibley: And in addition that the interest rate at that time was 6.5 per cent?

Mr. Moog: That is correct.

Mr. Shibley: And you subsequently, you say, made notes of that? I haven't still got the documents down but ~~see~~

Mr. Moog: Yes, I did.

Mr. Shibley: ~~Those~~ those are notes which form part of the file you have produced to me? Then ~~you~~¹⁶ continue the chronology. ~~Every~~ on August 15 you returned with the Premier from Europe. Is that correct?

Mr. Moog: I believe that was the date.

Mr. Shibley: Yes.

Mr. Moog: If the Premier said so, then that must have been the date.

Mr. Shibley: Yes. And on August 25 you had a meeting with Mr. Candy. Is that correct?

Mr. Moog: ~~On August 25~~^{dates} I am very poor but if Mr. Candy says so, I am sure that it is right.

Mr. Shibley: Well, according to his diary ~~and~~ I don't know about your own ~~but~~ according to his diary ~~see~~ and his testimony he had a meeting with you on August ~~25~~²⁵ ~~see~~

Mr. Moog: Right.

Mr. Shibley: ~~and~~ and that would be following your return from Europe and your visit to that Swiss bank?

Mr. Moog: Right.

Mr. Shibley: Did you tell Mr. Candy that you had been to the Swiss bank in the company of the Premier during your very recent trip to Europe?

July 25, 1973
2.25 - 2.30 p.m.
M.R.

Mr. Moog: No, sir. I made no mention to that whatsoever.

Mr. Shibley: When you say you made no mention, did you tell him that you had been to a Swiss bank at all?

Mr. Moog: No, sir.

Mr. Shibley: Did you tell him that you had been to Europe with the Premier?

Mr. Moog: No, sir.

Mr. Shibley: Did you tell him that you had informed yourself since your last visit as to the terms of financing that were available from Switzerland?

Mr. Moog: No, sir.

Mr. Shibley: In other words, no part of what transpired in Europe nor any information was the subject of conversation between yourself and Mr. Candy. Is that your testimony?

Mr. Moog: Quite sure about that.

Mr. Shibley: All right. Now, I ask the committee to look with me at Exhibit 35 ~~Moog~~.

Mr. Finlayson: Is that exhibit in front of the witness, Mr. Chairman?

Mr. Chairman: Yes, we are in the process of giving it, Mr. Finlayson.

Mr. Shibley: I'd ask you, members of the committee, to look at exhibit 35, which you will note is the memorandum of Mr. Farmer dated September 3, 1971, wherein it's indicated that Mr. — it says, "in your letter..." and this is directed to Mr. Dean, "in your letter of August 25, 1971, you refer to three possible methods of financing and administration building. Our comments are set out below for each possibility." And then the comments are set forth and you will note that the memorandum from Mr. Dean emanated from him on August 25 and I now ask that that memorandum be produced and made an exhibit. Mr. Bell ~~an~~ has just arrived in the nick of time because I could never have located it.

July 25, 1973
2.25 - 2.30 p.m.
M.R.

Mr. Finlayson: I'm sorry, is this a new

exhibit?

Mr. Chairman: Yes, it is.

Mr. Shibley: It's a new exhibit.

Mr. Finlayson: Could I take a look at it, please?

How can you identify this exhibit? Has it got anything to
do with Mr. Moog?

Mr. Shibley: Well, Hydro has agreed that all
documents can go in and I want to get it in.



H-1416 to follow

July 25/73

2:30-2:35 pm

C.B.

Mr. Chairman:

Mr. Genest, have you any questions in regard to this document?
Have you seen it?

Mr. Genest: Yes, I've seen it before Mr. Chairman,

It is a document that comes from the Hydro files.

Mr. Chairman: Exhibit number 186.

Mr. Shibley: Then, in addition, Mr. Chairman, I ask that the memorandum of August 25, 1971, from Mr. Dean to Mr. Raney of the Hydro legal department also be produced as a new exhibit.

Mr. Chairman: Likewise, Mr. Genest, are you content with that one?

Mr. Genest: Yes, absolutely the same situation.

Mr. Chairman: Exhibit 187.

Mr. Shibley: And I tell the members of the committee that in response to that August 25th memorandum from Dean to Raney was the response of October 25th, exhibit 38, from Stewart to Dean, Stewart is also in the legal department. So on the 25th of August, Mr. Dean memoed to Mr. Raney of the legal department for legal opinion referable to the head office building and effects on ~~the~~, I think it was on the bonding; at least, the mortgage with the Deutsche Bank, ~~and~~ that was responded to in October by Mr. Stewart's memorandum to Mr. Dean, exhibit 38.

The next document I want produced is another new exhibit dated August 27th, 1971, from Mr. Dean to Mr. Gush, requesting that Mr. Gush examine alternat~~e~~ financing. And in response to that memorandum was a memorandum of October 6th, exhibit 19, from Cameron to Dean. Instead of Mr. Gush again

July 25/73

2:30-2:35 pm

C.B.

(Mr. Shibley)

doing the alternate financing report, Cameron did one on October 6th, which was styled to the same effect, "the alternate financing for the head office building," exhibit 19.

Mr. Chairman: Mr. Genest, that document ~~from~~ from Mr. Dean to Mr. Gush, ~~saying~~, that is exhibit number 188.

Mr. Shibley: Again, I want this chronology to be clear in the minds of the members. If you will bear with me Mr. ~~Moog~~ Moog for a moment. On August 18, Mr. Dean wrote his first memorandum which is exhibit 18, and you will remember that that memorandum was characterized as being somewhat negative towards a lease-purchase type transaction. On October 21, Mr. Dean contributed to the material, which was being collected within that month, by his memorandum of exhibit 20; October 21, exhibit 20.

Now, I'd like first to deal with also the transcript of Hansard at page 80-1, at the very bottom, when I'm referencing the Farmer memorandum.

"Mr. Gathercole: Mr. Shibley, I didn't receive a copy of it, but I generally subscribe to the views that are set out there.

"Mr. Shibley: I must tell you, Mr. Gathercole, in the later material, the material that was ultimately submitted to the commission members, it appears that this -"

|-(And I'm talking about Mr. Farmer's memo, September 3)-|

"that this was a very basic tenet upon which the Commission was being asked to proceed; was it not?

"Mr. Gathercole: It was, definitely. *yes*

H 1417 to follow

July 28th, 1973

2.35 - 2.40 pm

H 1417 - 1

AA

(Mr. Shibley)

~~that this was a very basic fact upon which the Commission was being asked to proceed, was it not?~~

~~Mr. Gathercole: It was definitely.~~

"Mr. Shibley: Yes. That ~~that~~ the advice you had emanating from the Treasurer was that you should be cautious about marginal borrowings from external markets and so on, all as per this memorandum. Is it fair to describe this memorandum as the seed which was planted, or the basic information upon which that advice to the Commission was founded?"

"Mr. Gathercole: Yes it was."

"Mr. Shibley: And it carried through, really, into all the documentary material which was support data that finally reached the Commission many months later, did it not?"

"Mr. Gathercole: Yes, it did."

~~Mr. Shibley:~~ So members of the committee, I ask you to have regard for the fact that on ~~August 25th~~ August 25th, Mr. Moog met Mr. Candy. On August 25th, Mr. Dean's memo to Mr. Farmer eliciting this memorandum of September 3, which was the basic information upon which the Commission said it should seek out financing other than from normal sources. On August 25th, Mr. Dean memoed Mr. Raney for the legal opinion of October 25th, which opinion said there were legal problems referable to a specific charge on the building. On August 27th, Mr. Dean memoed Mr. ~~Gush~~ Gush to effect a new examination for alternate financing, giving rise to Mr. Cameron's memo to Mr. Dean of October 6th and on August - and whereas on August 18, Dean had prepared a negative report of exhibit 18, On October 21, he, himself, contributed to the material by a very positive report, ~~which~~ which is exhibit 20.

Now, Mr. Moog, having regard for what appears to be a highly concentrated amount of activity, within the offices of Hydro on October 25th, your meeting with Candy, Dean memo

July 25th, 1973

2.35 - 2.40 p_m

H 1417 - 2

AA

(Mr. Shibley)

to Farmer, Dean memo to Raney, and then on August 27, Dean memo to Gush^h are you telling this committee that that activity was in no way related to information provided by you to him in the course of your meeting on August 25th?

Mr. Moog: Mr. Shibley, with great respect, I don't know what goes on within Hydro. I dealt with Mr. Candy. I dealt on architectural matters. I made it clear to Mr. Candy on my first meeting that financing was important. Of course, it is. But Mr. Candy is not a financial man in my opinion and all I talked to him in that meeting was whether we should go with the old plans or whether we should go with the new ones.

Mr. Shibley: You haven't answered my question.

Mr. Moog: I can't tell you that. I don't know what goes on within Hydro. I cannot comment on that.

Mr. Shibley: You realize what was going on by the outline I gave you *and* ~~and~~

Mr. Moog: I appreciate that.

Mr. Shibley: I want it clearly a matter of record that it is your testimony that nothing you said to Mr. Candy might have generated this kind of activity within the ~~the~~

Mr. Moog: I couldn't say ~~how~~ *how*.

Mr. Shibley: ~~architectural, financial, legal,~~

Mr. Moog: I discussed architectural matters.

Mr. Shibley: ~~treasury department of Hydro.~~

Mr. Moog: I discussed architectural matters with Mr. Candy at that meeting.

Mr. Shibley: Yes. But nothing else?

Mr. Moog: Nothing else.

Mr. Shibley: I see.

Mr. Genest: Mr. Shibley, again I think that uncharitable people may draw conclusions from your assembly of

July 25th, 1973

2.35 - 2.40 pm

H 1417 - 3

AA

(Mr. Genest)

dates and I think that my recollection may be subject to correction, I don't want to ~~unilaterally~~ guarantee it, but my recollection is that, if you look at exhibit 20, which is the memorandum by Mr. Dean to Mr. Sissons, I think that you have a more what I respectfully suggest is a natural and more reasonable explanation for the activity you referred to. The first paragraph: "Some while ago, Mr. Banks suggested you would be interested in our views of ~~an~~ alternative means of financing any new head office building and in particular, the method used in the case of the OISE building."

Mr. Shibley: That's an additional piece of information. Thank you, Mr. Genest. I just wanted the committee to have the context of what was going on in Hydro on or about August 25th, 1971.

I want next to produce to you, Mr. Moog, what is exhibit 148, dated August 31, 1971.

H 1418 - 1 follows

July 25, 1973
2:40 - 2:45 pm
JLP

H-1418-1

Mr. Shibley)

Did you receive that letter?

Mr. Moog: That's correct.

Mr. Shibley: You notice it says:

Enclosed is a copy of our 1970 annual report which is just off the press, together with a copy of a booklet entitled "Ontario Hydro 1970" explaining our financial position and the scope of our operations. I trust this information will be useful for your purpose."

Did you receive the enclosures?

Mr. Moog: That's right.

Mr. Shibley: To what purpose did you

employ those enclosures?

Mr. Moog: I sent them to Switzerland.

Mr. Shibley: To the same Swiss Bank?

Mr. Moog: That's correct.

Mr. Shibley: Yes. Under cover of a letter

dated September 9, 1971. Is that correct?

Mr. Moog: You have the file; I would think

so, yes.

Mr. Shibley: Yes. And had you discussed

with Mr. Candy the purpose to which he refers in his letter to you?

Mr. Moog: I believe the reason I gave Mr.

Candy was that I would like to have some information about Hydro since Mr. Candy asked me all sorts of information about my company and what I could do, and I said "I would very much like to have your latest annual report to see what your company is all about." And that is what I asked him to do. I did not tell him where I would send it and for what purpose I would want it. That I considered my own business.

Mr. Shibley: I see. When did you make

the request of him for the annual report of Hydro?

Mr. Moog: I believe by telephone.

Mr. Shibley: It wasn't at your meeting

of August 25th?

Mr. Moog: No, I don't think so at all.

I think I called him up.

Mr. Shibley: I see. Members of the committee, you are going to have to forgive me because I have not had an opportunity to study this file before today, but I did want to put the chronology in that there is a letter of September 9, 1971 to one of the gentlemen with whom discussions had taken place ^{enclosing} ~~discussing~~ the material.

Mr. Moog, in that correspondence with the Swiss Bank, you expressed thanks for the comments on the economical and political affairs, did you not?

Mr. Moog: Yes, I believe that's what that letter says.

Mr. Shibley: And that's confirmatory of what Premier Davis ~~us~~ said was to his knowledge the subject of discussion in which he took place.

Mr. Moog: Right.

Mr. Shibley: You went on to say that you were sure that Premier Davis joined you in that respect. Then you said that the other gentleman, ~~about~~ the gentleman other than the one to whom you were writing, "might have mentioned that in my German conversation with him I briefly touched on a subject which, if it should materialize, could be of some interest to your bank and my company." That's part of that letter. ^{Mr. Moog: That's right.} ~~And~~ ^{Mr. Shibley:} And, again it's confirmatory that the conversation you had held with this gentleman was in German.

Mr. Moog: That is right.

Mr. Shibley: And at the time you wrote this letter of September 9, 1971, you had no reason to reference that fact other than the fact that it had been in German.

Mr. Moog: It was in German.

Mr. Shibley: Yes. Then you do mention in the same sentence that I've read that I briefly touched on a subject which, if it should materialize, could be of some interest to your bank and my company.

Mr. Finlayson, I'm going to read on the next paragraph, and if you will follow with me, then —

Mr. Finlayson: I don't have a copy!

Mr. Chairman: Would an adjournment help again? I hesitate, we have had so many breaks today, but I can —

Mr. Shibley: We'll give you a copy of your own document.

(Tape H-1419 follows)■

(Mr. Chairman)

~~an adjournment help again? I hate to break. We have had so many breaks today but I can ...~~

~~Mr. Shibley: We'll give you a copy of your own document!~~

I am going on to read to you -- I am on the document September 9 and it goes on to say:

"It concerns the possible assistance of your bank in the financing of an office building project of our company" -- I am sorry -- "office building project our company is studying which would be erected for the Hydro-Electric Power Commission of Ontario, permit me therefore that in that connection I am enclosing the 1970 annual report of Ontario Hydro. Should we make progress in this respect, I will be glad if I could keep you informed" -- and I can leave it at that.

Now that was the substance of that correspondence.

Mr. Moog: That's in that letter.

Mr. Shibley: And the material you remitted was the material received from Mr. Candy?

Mr. Moog: That is right.

Mr. Shibley: Just so as to make it clear, in addition to information noted on ~~xxx~~ your notes of data received at that meeting, Mr. Moog, I now note that there is a reference to no withholding tax ...

Mr. Moog: Sine qua non? Right?

Mr. Shibley: Sine qua non? Right. And again a reference to 15 years fixed - what's that about?

Mr. Moog: I believe that refers to the term of, under which that bank would finance. I suppose it is a fixed interest rate.

Mr. Shibley: Then its got ~~88~~⁸⁰ million SF maximum - what's that?

Mr. Moog: Swiss francs maximum.

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Mr. Shibley: And at the top of the page, it has eight per cent and a line then six and half per cent. Could you explain that please?

Mr. Moog: I think it is interest. Mr. Shibley, I believe the eight per cent, I believe there is when I ran through it with you the other day in detail, I think you asked me that question. I believe it refers to the interest rate applicable to loans in Germany.

Mr. Shibley: I see. And the six and half?

Mr. Moog: The six and half was the Swiss.

Mr. Shibley: Then to the right, its 98 dash 99 with something about ^{DM} ~~DM~~.

Mr. Moog: I think I can help you there. That is the payout of the loan in Deutsche marks.

Mr. Shibley: So eight per cent on Deutsche marks ...

Mr. Moog: You don't get 100 per cent payout, you only get 98 or 99 per cent payout.

Mr. Shibley: And then there ...

~~XXXXXXXX~~

Mr. Finlayson: There are two columns, Mr. Shibley. The first one is headed interest and the second is payout.

Mr. Shibley: Thank you. I couldn't read it on my copy.

Mr. Finlayson: That's the identification.

Mr. Shibley: Thank you. So the first column is interest and it has 8 per cent, payout ~~88~~ 98 dash 99 DM for Deutsche marks ...

Mr. Moog: That's right.

Mr. Shibley: And the next column six and half per cent, payout 100 per cent and that's Swiss francs.

Mr. Moog: Right.

Mr. Shibley: And that was the sum total of the information that you collected on ^{the} ~~this~~ occasion of that visit?

Mr. Moog: That's right.

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Mr. Shibley: And you say ~~that~~ you made those notes later on?

Mr. Moog: In my hotel room.

Mr. Shibley: Now then, there is another document, I won't refer to its content, except that I gather it establishes the hierarchy of personnel within this bank.

Mr. Moog: I had information from other people in Switzerland who would be the ones to follow the one officer.

Mr. Shibley: Now then, you got a response to your letter of September 9 being a letter dated September 21, 1971 from one of these Swiss bankers. Is that correct?

Mr. Moog: Whatever date is on there, that would be so yes.

Mr. Shibley: And he says: "I wish to thank you sincerely for your letter of September 9 and the attached annual report 1970 of Ontario Hydro. ~~Testimony on~~

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(Mr. Shibley)

~~of Ontario Hydro~~. Your information on your contracts with the Hydro-Electric Power Commission of Ontario has our best attention and we are gladly looking forward to your further news".

And "so and so and I were delighted to meet the Honourable William G. Davis, Premier of Ontario, and yourself not long ago and have highly appreciated your visit. Kind personal regards".

So that was the letter acknowledging?

Mr. Moog: That is correct.

Mr. Shibley: Now then just to complete August of 71 chronology, it was at the end of August that you had made comment to the Premier on some occasions that Hydro had approached you referable to the head office building, is that correct?

Mr. Moog: I believe so, yes.

Mr. Shibley: Can you help us as to the occasion on which that took place?

Mr. Moog: I believe it was in his house and it was a remark I made that I had been approached by Hydro in regard to their head office building and I think the Premier then rather quickly switched the subject on me.

Mr. Shibley: Did you say something to the effect "I think they need me"?

Mr. Moog: That is possible.

Mr. Shibley: And you say the Premier cut you off or switched the subject?

Mr. Moog: He is good at that.

Mr. Shibley: Now then I want to move to November, 1971, and again I think it important to the members of the committee to note the following chronology of that month.

On November 1, exhibit 22, there was a meeting of Mr.

H - 1420 - 2

(Mr. Shibley)

Sissons, Mr. Banks, Mr. Candy, Mr. Witbeck and Mr. Dean, and the memorandum, if I say so, indicates quite an appropriate attitude on the part of Hydro at the bottom of that page wherein it says:

"The first step should be to obtain an indication from a number of builder developers of the type of building which could be provided on the College Street site, built to our specifications, but built, financed and maintained by the builder in the least cost per square foot which would result".

Mr. Renwick: Which exhibit?

Mr. Shibley: That is exhibit 22, a meeting of November 1 among the men I have mentioned.

Mr. Allan: There seems to be a bit of a mix up.

Mr. Walker: Yes, there is a little confusion; mine is financing of head office building, number 22, November 1.

Mr. Shibley: That is the same one.

Mr. Chairman: ^{IT STARTED OFF WITH} the meeting attended by Mr. Sissons, Mr. Banks, Mr. Candy, Mr. Witbeck and Mr. Dean.

Mr. Shibley: But the references I have read at the bottom of that page wherein it says, you will see in the middle of that line, -

"the first step should be to obtain an indication from a number of builder-developers of the type of building which could be provided, etc."

And then again, much to the same effect, the next exhibit 23, dated November 2nd, which is a memo from Mr. Sissons to Mr. Gordon, and you will notice on the last page of that memorandum Mr. Sissons says:

"It will be evident from the foregoing that we are really talking about a negotiated partnership in which the benefit of a favourable location large scale development are shared. Our plan of attack is to endeavour within the next month to bring to a conclusion our assessment of ~~the~~ OISE and based on our

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(Mr. Shibley)

examination to attempt to write a specification with broad but very clear parameters".

I ask the committee to note the then intent of Hydro was "to draw specifications with broad but very clear parameters as to the type of ~~research~~ building and type of contract we are looking for. ~~With this we would then approach the market on a highly selective basis. That is...~~

Tape H - 1421 follows

H-1421-1

(Mr. Shibley)

~~"type of building and the type of contract we are looking for.~~

With this we would then approach the market on a highly selective basis, i.e. inviting only those relatively few strong and competent developers who could demonstrate to us that they could provide, and in fact had some record of providing successfully, all of the elements of such a contract."

Again I would suggest to the committee a very appropriate approach.

Then Mr. Moog you had a meeting with Mr. Candy on November 2, did you not?

Mr. Moog: Is that what Mr. Candy says? I believe that is so then.

Mr. Finlayson: Have you got your statement in front of you, Mr. Moog?

Mr. Bullbrook: Page 8 of his opening statement.

Mr. ~~Moog~~ ^{Moog}: All right, fine, thank you, Mr. Bullbrook.

Mr. Shibley: You had a meeting on November 2, is that correct?

Mr. Moog: Let me just find the meeting. Yes that is right.

Mr. Shibley: And did you at that meeting discuss the head office building with Mr. Candy?

Mr. Moog: Yes, I did.

Mr. Shibley: In fact, up until this time you had already been working very closely with him referable to a new design for the building.

Mr. Moog: That is right.

Mr. Shibley: You had reached a point where design drawings were either complete, or almost complete, in a preliminary sense.

Mr. Moog: I suppose that is correct.

Mr. Shibley: Yes.

Mr. Moog: We were working with Mr. Candy on that, yes.

Mr. Shibley: You were working closely with him. And did you discuss with Mr. Candy their then intention as displayed by the two exhibits that I have just read to you, that they were going to draw specifications with broad parameters and approach a few

H-1421-2

(Mr. Shibley)

strong developers from whom to solicit submissions? Was that mentioned to you?

Mr. Moog: No, not in that context. I don't recall.

Mr. Shibley: "No, not in that context, I don't recall." I am not really sure what your answer is, Mr. Moog. Did you have any discussion referable to the then intentions of Hydro as displayed by the two exhibits that I have read from?

Mr. Moog: Mr. Candy came in and asked me about them. I believe we discussed the building in general, and we discussed alternative proposals.

Mr. Shibley: I see. Did he indicate to you that they were thinking of drawing specifications to submit to a few strong developers?

Mr. Moog: I don't recall any specific reference like that.

Mr. Shibley: I see, you don't recall.

Mr. Moog: I am trying to help you Mr. Shibley. I just don't recall what exactly took place on November 2, 1971. I really am trying to be helpful.

Mr. Shibley: Well let me put it another way. Were you aware during November of 1971 that that was their intention to draw specifications and to solicit submissions from a few strong developers?

Mr. Moog: I couldn't say so at all. I don't think so.

Mr. Shibley: You don't think so. Then the file that you have produced, the very next document in it, is a letter from you to the same Swiss bank dated November 10, 1971, Is that correct?

Mr. Finlayson: Once again, he hasn't got it. Which document are you talking about?

Mr. Shibley: November 10. It is a letter from Canada Square to the same Swiss bank.

Mr. Finlayson: I have got a letter here with that date on it.

Mr. Shibley: Yes.

Mr. Finlayson: Okay.

Mr. Shibley: And you say in this letter:

"Thank you very much for your letter of September 21. It appears as if our company is making some progress regarding the

H-1421-3

(Mr. Shibley)

Hydro project. As financing is a key factor, I would very much appreciate your considered opinion on the following two matters which would assist me to evaluate the feasibility of being able to do business with you:

1) Is it possible that we could get a SF (Swiss) francs \$80 million loan amortized over a 15 year period repayable in equal monthly instalments to you? Alternatively, could your bank agree at a cost to resubscribe a Swiss franc \$80 million loan at the end of the fifteenth year, and the then current interest rate..

Mr. Finlayson: "At the then.."

Mr. Shibley: I'm sorry, "At the then current interest rate, preferably as an amortized.."

H-1422-1 follows

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JLP

(Mr. Shibley)

~~I'm sorry. At the time the current interest rate probably was~~
~~amortized~~ 15-year loan. If so, what would be the charge? Would it
be equivalent to the then applicable subscription cost, payable 15
years from now? Favourable consideration on either of these two
points would assist us in our endeavour to include your bank in an
anticipated financial structure regarding the above. With best
regards."

Did you write that letter?

Mr. Moog: I suppose so; yes, I did.

Mr. Shibley: And did you advise Mr. Candy

at the time that you were going to be in communication with that self
same Swiss bank in those terms?

Mr. Moog: No Sir.

Mr. Bullbrook: What was the date of that

letter?

Mr. Shibley: That letter is November 10,

1971. Did you have no conversation with Mr. Candy of your communica-
tions within the month of November with that Swiss bank?

Mr. Moog: No Sir.

Mr. Shibley: Did you have any discussion

with Mr. Candy in the month of November referable to that Swiss bank?

Mr. Moog: Never to any specific source of

financing ever.

Mr. ^{P.C.} Hodgson: ^{Or} Anyone else with Hydro?

Mr. Moog: No Sir.

Mr. Shibley: All right. Mr. Moog, one

of the documents in this file is a ~~perspectus~~ of that same bank, the
very first *set of papers*.

Mr. Moog: Mr. Shibley, with great respect,

there are many banks mentioned in that ~~perspectus~~.

Mr. Shibley: I'm not going to produce it,

don't you worry about that.

Mr. Moog: No, I wasn't worried about that,

but I never made reference to any specific Swiss bank to Mr. Candy, Sir.

(Mr. Moog)

I consider that my own information.

Mr. Shibley: I see. And you wouldn't show him a p~~ers~~pectus?

Mr. Moog: I think I have shown him a p~~ers~~pectus, yes.

Mr. Shibley: Well that's what I want to know. In the month of November, 1971, you showed Mr. Candy the p~~ers~~pectus.

Mr. Finlayson: Just a minute, you keep forgetting the operative thing is that there's more than one bank^{mentioned} in that p~~ers~~pectus.

Mr. Shibley: I'll get to it, don't worry.

Mr. Finlayson: I would appreciate that. ^{That's all I'm trying to say.}

Mr. Shibley: In November of 1971, you showed Mr. Candy the p~~ers~~pectus of a Swiss bank.

Mr. Moog: All right, I showed him that p~~ers~~pectus at some time. If you have his testimony to that, then I would agree with that.

Mr. Shibley: And was the p~~ers~~pectus one of the ones within this file?

Mr. Moog: That is right.

Mr. Shibley: That is right.

Mr. Moog: That is right.

Mr. Shibley: And do you remember when you showed him that p~~ers~~pectus?

Mr. Moog: I can't recall, but ^{if} Mr. Candy has reference to it, I would accept whatever he says.

Mr. Shibley: Well, he has yet to make reference to it, Mr. Moog, but I have been informed that he was shown ^{such a p~~ers~~pectus.}

Mr. Moog: Yes, he was. I do say he was.

Mr. Shibley: Yes, all right. On November 11, this is _____

Mr. Bullbrook: Excuse me, I'm at a loss here, is ~~the~~ Mr. Moog's testimony that he can't recall when he showed it to him?

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JLP

Mr. Shibley: He said he could not recall

Mr. Finlayson: When he showed it to him.

Mr. Shibley: When he showed it to him.

Yes, that's ~~what~~ what I questioned him about.

Mr. Henderson: Mr. Chairman, Mr. Moog, ~~on~~

November 26, in his own statement, suggests that he showed it.

Mr. Moog: ~~on~~ Well, that's fine then. I'm

Mr. Shibley: What I was interested in

knowing, Mr. Moog, is that again one of the documents

Mr. Finlayson: No, it's ^{the} prospectus, Sir;

^{the} prospectus.

Mr. Henderson: Oh, I'm sorry.

Mr. Shibley: For the assistance of the com-

mittee, I should tell the committee that the next attendance in the chronology is a meeting between Mr. Candy and Mr. Gathercole on November 11 of that same month, and I'm not going to ask Mr. Moog any questions about it. But I think you should know that that's part of the chronology.

The very next letter in your file, Mr. Moog,

Mr. Bullbrook: I'm sorry to interrupt, Mr.

Shibley, would you help me on something?

Mr. Shibley: Surely.

Mr. Bullbrook: Do you consider it probative

as to when Mr. Moog secured the prospectus?

Mr. Shibley: He's ~~as~~ already said that he got the prospectus. I'll ask him that. Sorry Mr. Bullbrook.

Mr. Bullbrook: Maybe I missed that.

Mr. Shibley: Mr. Moog, you obtained that prospectus which is in this file, and which you showed to Mr. Candy in the month of November

(File H 1423 follows)

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M.R.

~~Mr. Moog:~~
~~Mr. Moog:~~
Mr. Shibley: Mr. Moog, you obtained that ~~perspectus~~^{perspectus}, which is in this file and which you showed to Mr. Candy in the month of November, from the Swiss bankers when you were in Switzerland on August 13, 1971?

Mr. Moog: That is correct, Mr. Shibley.

Mr. Shibley: Yes.

Mr. Bullbrook: I'm sorry, I did ~~←~~

Mr. Shibley: Thank you.

Mr. Bullbrook: I apologize, Mr. Shibley.

Mr. W. Newman: Mr. Shibley, I'm getting a little confused here, I'm sorry, ~~but~~ you said he showed it to Mr. Candy in the month of November?

Mr. Shibley: Yes.

Mr. W. Newman: I believe Mr. Moog, and correct me if I'm ~~wrong~~^{wrong}, didn't say for sure. He said if Mr. Candy said so, then that's right.

Mr. Shibley: Well, Mr. Genest, perhaps you can clean this up quickly?

Mr. Genest: Well, I am instructed by Mr. Candy that he believes he was shown ~~what~~ what he calls a brochure ~~and~~ sometime in November.

Mr. Shibley: Yes. But in any event, you showed him a ~~perspectus~~^{perspectus}?

Mr. Moog: Oh, yes.

Mr. Shibley: And it was the ~~perspectus~~^{perspectus} in this file?

Mr. Moog: That is right.

Mr. Shibley: And it was the same ~~perspectus~~^{perspectus} as you had received from the Swiss bankers on August 13, 1971?

Mr. Moog: Yes.

Mr. Shibley: And what was your purpose in showing him the ~~perspectus~~^{perspectus}?

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Mr. Moog: I think I said to him, whenever I showed it to him, that there is a possibility of obtaining Swiss financing.

Mr. Shibley: Yes. Did you tell him it was possible or that's where your financing was going to be to the extent of \$20 million?

Mr. Moog: I think the ~~pro~~ ^{pro}spectus says that it's \$20 million, and I did say that that would be the type of financing.

Mr. Shibley: Well, for the reason, Mr. Moog, and I'd be glad to explain it, that so many Hydro documents include reference to 20 million Swiss as part of your financing, 20 million Swiss at 6.5, I'd like to know did that information emanate from you to Mr. Candy and into their documents?

Mr. Moog: That is right, I did.

Mr. Shibley: Yes?

Mr. Moog: Yes.

Mr. Shibley: All right.

Mr. Finlayson: In fairness, I know it's a little difficult with everybody ~~peaking~~ ^{speaking} at this thing, but the ~~pro~~ ^{pro}spectus is for the issue of 80 million Swiss francs at 6.5 per cent.

Mr. Shibley: Thank you, Mr. Finlayson. I'm not concerned really except to establish that he was shown the ~~the~~ self-same document. There ~~has~~ ^{has} been so much said about the irrelevancy of the content of this file that I want it clear that the whole of its content was relevant, in the way I'm developing with this witness.

Now, may I go on with you: Then there is a letter dated November 18, 1971 ~~last~~

Mr. Moog: I'm sorry? November ~~last~~

Mr. Shibley: November 18.

Mr. Finlayson: Is this in the ~~last~~

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Mr. Shibley: It's the very next letter in the file.

Mr. Finlayson: Yes, I have it.

Mr. Shibley: "Dear Mr. Moog: This is to thank you for your letter of November 10 informing us about the progress you have made regarding the Hydro project. I can answer your questions concerning the issue of a loan in Switzerland as follows. The normal term for a bond issue on the ~~Swiss~~ Swiss capital market is 15 years. Prior to this date, annual instalments - the first one after 10 years - of up to one-fifth each of the total amount of, say, 60 million Swiss francs are scheduled. For the purpose of such redemptions the banks purchase on behalf of the company the bonds on the market, if and when this is possible, at prices not exceeding the par value of the bonds. Monthly repayments as suggested by you would not only be too complicated but they are also not known to the Swiss public and, therefore, unfeasible. After the 15 year period it might, in principle, not be impossible to arrange for a conversion in whole or in part into a new loan at the then current interest rate. In the light of the many ~~imponderabilities~~ imponderabilities the Swiss banks could, however, not enter any such understanding which you will ~~see~~."

Mr. Finlayson: Undertaking.

Mr. Shibley: "as undertaking which you will certainly understand. With best regards."

Now, you received that letter, I gather, sometime following November 18? Is that correct?

Mr. Moog: Yes, I did, Mr. Shibley.

Mr. Shibley: When did you receive that letter?

Mr. Moog: I suppose several days after the sending. It takes four or five days.

Mr. Shibley: So that would be around November 22?

Mr. Moog: I would say thereabouts.

Mr. Shibley: Yes. ~~Had you had transcontinental telephone discussion with the Swiss...~~ (H-1424 to follow)

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V.H.

~~XXXXXXXXXX~~

(Mr. Moog)

~~I would say thereabouts, yes~~

Mr. Shibley: Had you had Trans-Continental Telephone discussion with the Swiss bank during the month of November?

Mr. Moog: I believe I might have had one or two.

Mr. Shibley: And had you had previous Trans-Oceanic calls to the same Swiss bank?

Mr. Finlayson: You mean about this ...?

Mr. Shibley: About this project, yes.

Mr. Moog: I don't recall. I had one or two calls in that period. It might have only been one, I don't know for sure.

Mr. Shibley: But, in any event, you had some calls in November did you?

Mr. Moog: ~~XXXXXX~~ I believe in that period of time you have just been describing which is in that file, yes.

Mr. Shibley: The time that's defined in here?

Mr. Moog: Yes.

Mr. Shibley: It doesn't indicate anything about the calls. I am just wondering whether you might not have had calls.

Mr. Moog: I think I have had one call. It might have been two, and I think its about, it could have been, if I did have a call, I think it was about the same two points which you have just raised.

Mr. Sibley: Yes. So that the information that was elicited from this exchange of correspondence ~~but~~ was also the subject of the telephone communication between you and Zurich.

Mr. Moog: I believe that is so, yes.

Mr. Shibley: Have you got a record of those -- the dates of those calls?

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Mr. Moog: I don't think so.

Mr. Shibley: Could you check and let us know when you made them?

Mr. Moog: All right.

Mr. Shibley: And I gather the discussion that took place in the course of those calls had to do with funding the Hydro ...

Mr. Finlayson: Mr. Shibley, he says he thinks he has one call. You asked him if he would check and he will check. Now don't assume that there were a number of calls.

Mr. Shibley: No. He said one or two.

Mr. Moog: It might even have been ~~one~~ none. I just don't -- I am trying to recall what I did.

Mr. Shibley: He said one or two, I was sure.

Mr. Finlayson: Now he's got it down to none.

Mr. Shibley: Well I realize that.

Mr. Moog: I know that the terms bothered me outlined in the brochure and I planned to ASCEERTAIN whether there was any change ~~to~~ to change them at that stage which you have now told the world about, it just wasn't possible.

Mr. Shibley: Did you at that time discuss with Mr. Candy the progress you were realizing respecting the financing with this Swiss bank?

Mr. Moog: No sir.

Mr. Bullbrook: What was that question?

Mr. Shibley: Did you discuss it with Mr. Candy and he said no, the progress he was making.

Mr. Bullbrook: What does that mean? You've got to help me here, I am sorry. I am obviously having a bad afternoon.

Mr. Shibley: You had a bad morning, that's why you are having a bad afternoon!

Mr. Bullbrook: I want to, and I don't want to raise the ire of Mr. Finlayson, but I want to understand this. You see, what confuses me, Mr. Chairman, is that

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V.H.

(Mr. Bullbrook)

on August 25 we have direct evidence that on August 25 there was a discussion ...

Mr. Shibley: Mr. Bullbrook, may I just complete the chronology. I know what you want and I think I would like to give it to the committee.

On November 19, there ~~was~~ was a meeting between Mr. Gathercole and the Premier relative to Task^{FACE} Hydro. There was on November 22, a meeting between Mr. Gathercole with Mr. Moog and Mr. Candy. On November 22, there was also a meeting of general managers of Hydro, which is exhibit 25, which is a famous exhibit zeroing on one developer and I may read that to you. T

"The time appears opportune" - this is November 22,- 1971 -- "The time appears opportune to revive this project, in view of employment conditions, the financial climate, and the Commission's urgent need to consolidate its office space. One competent developer has already indicated a willingness to work within a framework incorporating some considerable part of the architectural design work which was previously shelved. This could be a reasonable justification for proceeding without the ~~a~~ complicating process of soliciting competitive tenders, a procedure which would normally required."

Of course, we have been wondering for a long time, members of the committee, what ...

Mr. Genest: Mr. Shibley, I think in fairness you should read the next paragraph.

Mr. Shibley: Thank you.

Mr. Genest: I have been exercising^{ed} for some time about instruction you have placed on this document and the one I am sure you are coming to, the memorandum of November 25.

Mr. Shibley: All right. Sorry. ~~XXX~~ I'll read it.

H-1424-4

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3.10-3.15 pm
V.H.

Mr. Genest: All witnesses that have been heard to date have refused to place on this document the interpretation that you are placing on it.

Mr. Shibley: All right.

~~"The General Manager requested that~~

H-1425 follows

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3.15 - 3.20 pm

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AA

(Mr. Genest)

~~heard viva voce the date have refused to place on this document~~
~~the interpretation that you are placing on it.~~

~~Mr. Shibley: All right.~~

"The general manager requested that a clear statement of the alternatives open to the Commission be prepared and that a recommended course of action be presented for review and decision by the Commission."

And then on November 25th, the notes on logistics, and it said that this statement related to the efforts to salvage plans as the explanation for it on page two.

Mr. Finlayson: Has the witness got a copy of this thing we are talking of?

Mr. Shibley: Would you please give it to him.
Thank you Mr. Finlayson. I am sorry. He should have been provided with it.

I'll
And ~~I have~~ asked the committee members to read this carefully with me. On page two, exhibit . . .

Mr. G. Hodgson: This is the memo from Mr. Sissons.

Mr. Shibley: Yes. Mr. Sissons notes re "Logistics,"
page two:

"On all of these grounds it appears as though our best interests would be served if we find the right type of lease-back partner. Because of item 6" ~~that~~ . . . That's to do with salvaging of plans.. "it seems virtually impossible to solicit proposals from developers at large, or even from a select group of ~~the~~ three or four in whom we would have ~~reasonable~~ confidence. I think we are in the position of having to select the developer in whom we have complete confidence, and to support this decision by the fact that we have received so favourable a rate of financing from him. ~~and I did I did I did I did I did~~"

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AA

H 1425 - 2

(Mr. Shibley)

Mr. Moog, did you provide Mr. Candy with information to the effect that you were able to borrow \$20 million at 6-1/2 per cent from Switzerland during the month of November, 1971?

Mr. Moog: Mr. Shibley, as I said before, I gave Mr. Candy the brochure, which is self-explanatory.

Mr. Shibley: "and so favourable an end rental that we chose him to participate with the original architects in the redesign and the construction of the building."

And then it goes on, "As we have had a number of prominent developers asking to be allowed to ~~participate~~ participate I think we should talk to them in general terms about financing, probably rental and other pertinent factors. We are initially favourably impressed with the result achieved at OISE in terms of the type of building, the apparent flexibility of the construction arrangements, and the very favourable leasing and maintenance rate. If we conclude that this is the course to follow, the fact that the same developer had had both jobs might involve an additional point of criticism for both ourselves and the government for which we should be prepared."

Now, Mr. Moog, having regard for the outline I have given you, namely the circumstance that within Hydro, on November 1 and November 2, their own documents indicated that they intended to draw specifications with broad parameters, whereas by November 25th, they had decided to deal with yourself it appears . . .

Mr. Genest: Objection! Mr. Chairman, I object most violently to that assumption. No evidence of any witness in this hearing supports the proposition that Hydro had decided by November 25th to deal with one developer. In fact, the evidence is directly to the contrary. Mr. Sissons has

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3.15 - 3.20 pm

H 1425 - 2 3

AA

(Mr. Genest)

sworn that this was a proposition, an alternative that was to be considered by Hydro and the evidence indicates that it was shot down almost immediately and I most ~~strongly~~ strongly object to the statement made now by counsel that they had been decided by Hydro because it is not supported by one ~~little~~ tittle of oral evidence at this hearing and I say with great respect, it is not supported by this document.

Mr. Finlayson: Well, Mr. Chairman, without, in any way joining in my friend's ~~hostile~~ belligerence, I would like to associate myself with the content of his objection.

Mr. Shibley: Thanks George. We needed that. All right. I will put my question differently.

Mr. Chairman: Mr. Shibley, I would like to comment on it for a minute. I ~~remember~~

H 1426 - 1 follows

July 25/73

3:20-3:25 pm

C.B.

~~Mr. Chairman:~~
~~XXXXXXXXXX~~
~~(XXXXXXXXXX)~~

~~Mr. Chairman: I would like to, at least~~

Mr. Shibley, I would like to comment for a minute. I remember, Mr. Genest, quite a discussion around the word, the definite article involved, when we were dealing with ~~this~~ ^{this} I think, Mr. →

Mr. Genest: I'm not disputing that this refers to Canada Square, but what I dispute is the conclusion that has been made; that a decision had been made and I ~~say~~ ^{say} the evidence doesn't support that.

Mr. Bullbrook: Some day we will sit down and we will write a report and we will come to a conclusion.

Mr. Genest: I know.

Mr. Chairman: All right, well, we haven't made the conclusion yet on it.

Mr. Genest: You haven't made one yet, that's right.

Mr. Chairman: And I think Mr. Shibley's question was probably based on a ~~same~~ conclusion.

Mr. Shibley: All right, I'll ask it another way. Mr. Moog, having regard for the apparent intentions of Hydro as reflected in their November 1 and November 2 memoranda, and the statement in this memorandum that "it appears as though our best interests would be served to do the following", and I've already indicated it to you, and I hope counsel will all agree, that this doesn't appear to suggest that they were thinking of dealing with more than one developer. Are you aware of any information, whatsoever, referable to the month of November, 1971, which would have brought about that change in thinking?

Mr. Moog: I do not know what happened behind the scenes in Hydro at all, Mr. Shibley. I dealt with one man, Mr. Candy.

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3:20-3:25 pm

C.B.

Mr. Shibley: I see. Well, did you say anything to Mr. Candy that brought about that situation on November 25, as reflected by that document?

Mr. Moog: Nothing more than what I've previously stated.

Mr. Bullbrook: Mr. Shibley, would you ask please (when) the witness ~~what~~ his attitude towards Mr. Candy's responsibility ~~ever~~ changed ~~yes~~?

Mr. Finlayson: Well, just a minute.

Mr. Bullbrook: ~~yes~~ in the - I'm sorry Mr.

Finlayson wants to interrupt.

~~XX~~

Mr. Finlayson: I haven't had much luck with Mr. Shibley, but, with great respect, I think he ought to be allowed to develop his points. We seem to be jumping a long way ahead. I didn't know that Mr. Moog had ever changed his attitude towards Mr. Candy.

Mr. Chairman: I don't think you finished your question.

Mr. Bullbrook: No, I didn't have an opportunity. The evidence has been, Mr. Moog, that on August 25, he definitely recalls he didn't discuss financing because Mr. Candy had nothing to do with financing, he was an architect. We now have evidence that subsequently he showed a prospectus or a brochure to Mr. Candy from a bank. We have evidence that doesn't refute that there was a possibility of discussion in connection with financing with Mr. Candy. I'd like to know when his attitude changed with respect to Mr. Candy's function?

Mr. Chairman: ~~And~~ Comment on that, Mr. Moog?

Mr. Moog: Be glad to. Mr. Bullbrook, my attitude never changed to Mr. Candy. I know that he is an architect.

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C.B.

(Mr. Moog)

I also know that he knows very little about financing. All he was concerned about ~~and~~ I think from the first day on until today ~~is~~ that the money would be there when it is needed, ~~and~~ it will be.

Mr. Bullbrook: Will it? I appreciate that response. I point out to you, Mr. Chairman ~~and~~

Mr. R.G. Hodgson: How do we reconcile the fact ~~of~~ Mr. Sissons' comment with that?

Mr. Finlayson: How do you reconcile all of these internal documents? We didn't see any of these things until this inquiry started.

Mr. Chairman: Mr. Bullbrook, again, I don't think you finished your comment, did you?

Mr. Bullbrook: No. You see, what ~~had~~ has caused me concern with respect to this, is ~~and~~ I think the chronology is extremely important; extremely important. I've accepted without reservation the response of the witness, that he absolutely was certain, he was absolutely certain, that he didn't discuss anything to do with financing on August 25th, because of the fact he was dealing with the Commission architect who had nothing to do with financing, ~~and~~ the evidence is quite clear in this respect.

Mr. Finlayson: Mr. Chairman, I ~~object~~ object to this kind of discussion about the evidence. I think Mr. Shibley should be permitted to develop his line of questioning. I don't think that the members of the Commission should be making comments about the effect and weight of his evidence.

Mr. Chairman: I must remind you, Mr. Finlayson, you may not appreciate the way we conduct our business. But I'm afraid this is left very much to our discretion how we conduct our business. It may not be similar to a court in that regard. It may appear to be unfair to ~~you~~

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3:25-3:30 p.m.
M.F.

H - 1427 - 1

(Mr. Chairman)

~~course in that regard and this was a very important~~
you but I am afraid you are not going to change our modus operandi.

Mr. Bullbrook: I won't say anything further, but I want Mr. Finlayson to know that he will never deter me from saying what I want when I wish.

Mr. Finlayson: You have convinced me of that.

Mr. Bullbrook: When I was six years of age I remember little bully boys on the block.

Mr. Shibley: I thought I was supposed to be the bully and Mr. Finlayson is inviting me to be the one to lead the examination.

Mr. Chairman: Gentlemen, I want to come back to order. Mr. Glen Hodgson, you asked a question?

Mr. R. G. Hodgson: I think I have had an answer to my part of it but I do think that there is a point here. We have to reconcile the comment in this memo from Mr. Sissons with the situation and I haven't yet seen the tie-in.

Mr. Genest: Well, Mr. Hodgson, there is one very easy way of doing it, and that it is that it is hypothetical. If said if we do this we will have to have a good rate of financing and a very good end rental.

Mr. Shibley: No, no, no.

Mr. R. G. Hodgson: Oh, I don't take it that way, Mr.

Genest.

Mr. Genest: Well I suggest it can be taken that way.

Mr. R. G. Hodgson: That isn't the way it reads.
Mr. R. G. Hodgson: Horrendous conclusions shouldn't always be drawn against Hydro.
Mr. R. G. Hodgson: I'm not drawing any horrendous conclusions.
I think - I apologize for that last remark.

Mr. Finlayson: He has got my notes.

Mr. Genest: Mr. Finlayson's belligerence is catching obviously, up with me, I will have to find an antidote.

Mr. Chairman: Mr. Shibley, I think you may be allowed to continue.

Mr. R. G. Hodgson: No, I would like to make this

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(Mr. R. G. Hodgson)

point. I think this memo from Mr. Sissons says that to support this decision by the fact that we have received^{it} so favourable a rate of financing from him,^{it} and that is the point that I can't quite reconcile. When did he receive such a favourable rate of financing?

Mr. Shibley: Yes, exactly, Mr. Moog. When -----

Mr. Moog: I suppose it is the rate which is on the brochure, Mr. Shibley.

Mr. Shibley: Yes, of course, and that would mean that you had had discussion with Mr. Candy prior to the preparation of the November 5th memorandum.

Mr. Moog: Mr. Shibley, I said before, and I want to make this quite clear, I never discussed at any time any financial details with Mr. Candy other than mentioning to him there is a possibility of financing along the lines of this brochure, or as outlined in this prospectus, to make it ^{more} correct, and that would give us ^{\$20} ~~20~~ million from Switzerland, and when Mr. Candy was upset at any time about financing all I did is assure him that I would arrange the financing.

Mr. Shibley: Yes, and your own efforts in that respect during the month of November were fairly intense. You had exchanged correspondence on November 10 and November 18.

Mr. Moog: I consider that very moderately intense as a matter of fact.

Mr. Shibley: And you had at least one or more trans-oceanic calls?

Mr. Moog: Perhaps yes. I will check that for you.

Mr. Shibley: And I should tell you, Mr. Moog, and I don't want to refer you to them individually, but spread throughout the Hydro documentation is the reference that you, Canada Square, were providing financing at a very favourable rate, and that rate was six and a half per cent, and that seems to stem from what happened

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3.25-3.30 p.m.
M.F.

H - 1427 - 3

(Mr. Shibley)

in the month of November.

Mr. Moog: It is quite possible that Mr. Candy took the information from that brochure and ~~pass~~ -----

Mr. Shibley: And the only - I am sorry.

Mr. Moog: And passed it on. I am not aware of what Mr. Candy has done.

Mr. Shibley: Mr. Moog, you are a very aggressive businessman are you not?

Mr. Moog: Well, you said it.

Mr. Shibley: Would you agree with me?

Mr. Moog: That is a matter of terminology, I suppose it is ~~right~~ correct, sir.

Mr. Shibley: Surely, that is why you are successful.

Mr. Moog: One reason.
And one of the sales elements in your dealings with Mr. Candy was a very favourable rate of financing, wasn't it?

Mr. Moog: I mentioned that rate to him because it was printed on the brochure.

Mr. Shibley: You mentioned it to him and you showed him the brochure?

Mr. Moog: That is right.

Mr. Shibley: You wanted to emphasize it upon him that you had Swiss sources of funds?

Mr. Moog: I did not say I had Swiss sources, Mr. Shibley, with respect, I just showed him the brochure. I said this is a possibility.

Mr. Shibley: Well does the ---- I just want to ----

Mr. Genest: ~~Mr. Shibley~~ ^{R. A. Hodgson}, I just want to make a comment, because I think the other part of that sentence which states "and so favourable an end rental" would mean that there was more than a brochure that transferred in the discussions.

Mr. R. A. Hodgson: Inaudible.

Mr. Genest: ^{Oh, no.} There is no evidence that we received any

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H - 1427 - 4

(Mr. Genest)

indication of an end rental by that date, no evidence of any kind.

Mr. Shibley: No, I think that is right, Mr. Hodgson, I think that what we have got is an indication, if we all agree, for - can we possibly agree now that we have exhaustively

Tape H - 1428 follows

July 25, 1973
3.30 = 3.35 p.m.
M.R.

(Mr. Shibley)

~~I think that what we have been told is that~~
~~all agree that we have possibly agreed, now that we have~~
~~examined the circumstantial evidence~~
and pulled teeth for months, that the developer referenced
in this memorandum is Canada Square?

Mr. Genest: Absolutely.

Mr. Shibley: Thank you. And that it was ~~long~~

Mr. Genest: But the point I want to make is

that this is a speculative memorandum ~~and~~ I don't read it
the way that Mr. Sissons, who ^{was} ~~is~~ in the box and will return
if necessary, is going to reinforce this and testify to it;
that this is a speculative memorandum; that there was no
indication that they had received a favourable end rental.
It was a statement that if we go this way, we will have to
support it by having received the very favourable rate of
financing and a favourable end rental.

Mr. Deans: Well, Mr. Chairman, that's partly
the interpretation one would put on it from reading the
document.

Mr. Genest: I just don't read it the way you
do, Mr. Deans. I'm trying to be ~~long~~

Mr. Deans: I'm not going to ~~say~~

Mr. Genest: I agree that it could be taken the
way you read it.

Mr. Deans: Is it possible to read it just for
a moment so that the record will understand what we are
talking about? It says, "I think we are in a position of
having ~~say~~ "

Mr. Genest: "the position".

Mr. Deans: "I think we are in the position of
having to select the developer in whom we have complete
confidence and to support this decision by the fact that we
have received so favourable a rate of financing from him and
so favourable an end rental that we ~~even~~ choose him to
participate"

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M.R.

Mr. Genest: "We chose him"

Mr. Deans: "We chose him ^{him}", I'm sorry; "chose him to participate with the original architect in the re-design and ^{the} construction of the building."

Mr. Genest: That's right. If we conclude ^{this} that ~~is~~ the course to follow.

Mr. Deans: If we conclude?

Mr. Genest: And then another entirely different alternative was raised. Let's go into the Eaton Centre. The rest of the memorandum ~~and~~ with great respect I suggest, Mr. Deans, and ~~a~~ some members of the committee are reading far too much in this memorandum.

Mr. Bullbrook: Well, it's open to two interpretations.

Mr. Genest: I agree.

Mr. Bullbrook: Could we permit counsel, since it is open to - well, let's, for the sake of the moment, since I think we are all agreed it's possibly open to two interpretations, would Mr. Genest take objection to counsel proceeding with his course of questioning ~~long~~

Mr. Genest: I don't want to be obstructive.

Mr. Bullbrook: ~~long~~ No, ~~no~~ on the basis that of the one interpretation that he doesn't particularly subscribe to? Is that all right?

Mr. Genest: As long as it is clear, Mr. Bullbrook, that it is a hypothesis?

Mr. Bullbrook: Well, no, it's not ~~yes~~

Mr. Genest: ~~Wordsworth~~ I just don't want to be taken as lying down and admitting that that's the fact that we're convicted with.

Mr. Bullbrook: Well, we're not into semantics but this isn't hypothetical. It might be speculative and there is a distinction between the two of them. This obviously is not hypothetical. There's no doubt about that.

Mr. Genest: Well, I suggest that it's hypothetical until this committee has made it's decision.

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M.R.

Mr. Chairman: Well, I think that's a fair statement, Mr. Genest, but I would assume that somewhere along, before we wind up our hearings, that we will be giving you an opportunity to deal with some of these points that you are objecting to now at a later point when they may or not be - when they will fall into place a little better and they may or may not be important. ^(at that point.) Mr. Shibley.

Mr. Shibley: Mr. Moog, did Mr. Candy advise you of the gist of the information set forth in the memorandum of November 25, ~~Exhibit~~ Exhibit 26?

Mr. Finlayson: I'd like to know a little about this. Who is the memo to? Is this a confidential memo?

Mr. Shibley: Well, it's a memo ~~to~~.

Mr. Moog: I've never seen it before.

Mr. Shibley: ~~from~~ from Mr. Sissons. It seems to be a memo to the file ~~to~~.

Mr. R.G. Hodgson: ~~It was received in the Chairman's office.~~ *It was received in the Chairman's office.*

Mr. Shibley: Pardon?

Mr. R.G. Hodgson: It was received in the chairman's office.

Mr. Shibley: Yes, received in the chairman's office. "As discussed ~~xxxxxxxxxxxxxxxxxxxx~~ we will stand ready for a meeting. Sissons."

Mr. Finlayson: Well, was there any evidence that Mr. Candy got a copy of this?

Mr. Shibley: I can't answer that offhand. Is there? Did he say he saw it?

It's my memory that he did, Mr. Finlayson, but I don't want to be definitive. I'd like to know that myself. Mr. Candy is there; perhaps he can tell me.

Mr. Genest: I'll have to find out. We are not sure.

Mr. Shibley: Pardon?

Mr. Genest: ~~We are not certain. I'll~~

H-1429-1

(Mr. Shibley)

Mr. Candy is there, perhaps you can tell.

~~Mr. Genest: if you'd like us to find out, we are not sure.~~

~~Mr. Shibley: Pardon?~~

Mr. Genest: We are not certain. I will confirm that.

Mr. Shibley: Well I would like it cleared up because Mr. Moog and Mr. Candy and Mr. Gathercole all met on the 22nd which was the same day as exhibit 25 wherein some similar sentiments were expressed. I thought there was evidence of a telephone conversation between Mr. Sissons and Mr. Candy in respect to this? Better get this cleared up.

Mr. Moog: This is very difficult for me to comment on
Mr. Shibley. Paragraph 4 states:

"We need to get the best possible building,"
Certainly that was always our intention; Mr. Candy's and mine.

Mr. Shibley: Yes.

Mr. Moog: "custom tailored to our specific needs,". Yes, we discussed that.

Mr. Shibley: Yes.

Mr. Moog: "one which will do credit to ourselves". Yes. And the rest of it. I think that one I can recall. There are many other references in. I just couldn't..

Mr. Shibley: By the way, Mr. Moog, was there every any discussion with you at this time that you were to salvage any part of the original plans?

Mr. Moog: In the very beginning I think we talked about that...

Mr. Shibley: That was back in August, wasn't it?

Mr. Moog: Yes I would say after we..

Mr. Shibley: By November there was no discussion about salvaging plans.

Mr. Moog: I wouldn't have thought so.

Mr. Shibley: No.

Mr. Moog: I don't recall.

Mr. Shibley: So does that put to rest one of the two interpretations or Mr. Genest are we still into that?

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CA

H-1429-2

Mr. Genest: No, Mr. Shibley, you haven't got my reply ~~2:45?~~ in a belligerent way, let me try in an unbelligerent way. It is not tied into the original, my...

Mr. Shibley: I thought Mr. Sissons' explanation was that they were only prepared to go with Canada Square, or one developper - Canada Square - if they could salvage the plans.

Mr. Genest: Well he believed that.

Mr. Shibley: Yes.

Mr. Genest: That's right. But what I say is that also that the evidence is quite clear in my respectful submission that this document did not, as you say it does, represent a decision by Hydro..

Mr. Shibley: All right.

Mr. Genest: It was the thought of one man in Hydro.

Mr. Renwick: We agree with that.

Mr. Deans: We agree with that.

Mr. Genest: I'm sorry. I misunderstood Mr. Shibley's question because he seems to say that ~~it is~~ that this was based ~~on the~~ solely on the salvage of the original plans. At least that is the way I follow your statement.

Mr. Shibley: But I am just trying to assist the committee with this evidence of the negotiations between Mr. Moog and the Swiss bank in November. Within the interim period between November 2 and November 25 I wanted to know if there was any relationship between the fact that you had had those negotiations, had discussed them with Candy, and the change of thinking on the part of Hydro reflected by the November 2 memoranda and the November 25 memoranda? Can you help us as to that, Mr. Moog?

Mr. Moog: I think I have given you an answer to that, Mr. Shibley.

Mr. Shibley: Well can you tell me whether you were, during that interval, in intense discussion with Mr. Candy to the effect that, for example, that you had Swiss financing at cheap rates, at low rates?

Mr. Moog: I said to him what I told you previously and nothing else.

H-1429-3

Mr. Shibley: Yes. And did you say to him that Hydro shouldn't wait upon dealing with two or more developers, strong competent developers, and needn't..

Mr. Moog: I never said that.

Mr. Shibley: Did you ever suggest that they needn't proceed to prepare specifications with broad parameters?

Mr. Moog: There was never any such discussion.

Mr. Shibley: I see. When you met with Mr. Gathercole and Mr. Candy ~~Mr~~ on November 22, what did you discuss with Mr. Gathercole?

Mr. Moog: I think all I tried to do is to impress him about the ~~the~~ assets of our company.

Mr. Shibley: In respect of the building of their building?

Mr. Moog: That is right.

Mr. Shibley: You told them the various functions which your organization could fulfill in that respect. Is that right?

Mr. Moog: I think I certainly spoke up for our company, yes.

Mr. Shibley: Yes. You ~~told~~ them that in building their Hydro head office building ~~your company could provide a full service type~~
~~type~~

H-1430-1 follows

July 25, 1975
3:40 - 3:45 pm
JLP

(Mr. Shibley)

~~you don't told him that in building their Hydro~~
your company could provide a full-service type proposal.

Mr. Moog: I suppose so, yes.

Mr. Shibley: Did you, or didn't you?

Mr. Finlayson: Mr. Shibley, with great

respect, Mr. Chairman, I appreciate that counsel is entitled to cross-examine a witness if he's been evasive, but he is putting proposition after proposition to this witness about a conversation that he's had with Mr. Gathercole. The proper way, in my respectful submission, is to ask the witness: "What did you say to Mr. Gathercole?" You put a proposition to him and he says: "Well, I guess so." And you say, "Well, you've got to be sure about that." Why don't you ask him what he said to Mr. Gathercole? I thought ~~xxx~~ that was a fairly simply way to proceed.

Mr. Shibley: But when I start that way

the memory seemed to be completely void, Mr. ~~Em~~ Finlayson, and I find

Mr. Finlayson: Not with this witness!

Mr. Shibley: Well,

Mr. Finlayson: You may have had trouble

with other people but that was before my client.

Mr. Genest: Now Mr., I'm sorry to be

~~see~~ you're hearing too much from us.

Mr. Shibley: Now you two fight it out.

Mr. Genest: No, but there is a point to

what Mr. ~~A~~ there was a point of fairness to what Mr. Finlayson is saying because I have in mind, which Mr. Finlayson may not have, Mr. Gathercole's evidence on that subject.

Mr. Shibley: Now, please Mr. —

Mr. Genest: Well, I'm not going to telegraph

it, but I have it in mind, and there may be a contradiction here and I think that is a very unfair way to elicit the contradiction by suggesting what may have been discussed, and the witness saying, "Well, maybe so, probably we did." ~~Tak~~ That's not the way to build up that contradiction. And I say it's unfair, with great respect, Mr. Shibley.

Mr. Shibley: All right. I'll satisfy you both I hope. What did you tell Mr. Gathercole?

Mr. Moog: I told him how good a company we were, that we could assist him with their new head office complex and we ^{were} ~~are~~ capable people.

Mr. Shibley: Pardon?

Mr. Moog: We ^{were} ~~are~~ capable people.

Mr. Shibley: Yes.

Mr. Moog: It was a very short interview.

Mr. Bullbrook: Mr. Moog, your counsel has said that you have great powers of recollection. Let's continue on.

Mr. Moog: That's what I'm trying to tell you, that I said these things to them.

Mr. Bullbrook: Would it be appropriate now, Mr. Chairman, that our counsel will undertake - ~~he~~ would you now undertake the line of questioning?

Mr. Chairman: Right.

Mr. Bullbrook: Now that you've satisfied Mr. Finlayson as to the proper method of questioning the witness.

Mr. Chairman: It does come to a dead end, Mr. Finlayson, I'm afraid when we proceed that way. Now, you can watch the questions.

Mr. Finlayson: I don't think it does at all.

Mr. Moog: I cannot recall verbatim what I said. I simply stated to him that ~~the~~ Canada Square would be ideally suited in my opinion to undertake the new head office building project.

Mr. Shibley: Was there any discussion of the fact that you and Mr. Candy had been working on some design drawings for the building?

Mr. Moog: No.

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8:45 pm
JLP

Mr. Shibley: Was he aware of that fact
from anything he said to you?

Mr. Moog: Not to my knowledge.

Mr. Shibley: Was there any discussion as
to the rate of financing at which your company could provide funds?

Mr. Moog: No Sir.

Mr. Shibley: Was there any discussion
between you as to the need to proceed without involving other developers?

Mr. Moog: No Sir. I am trying very hard
not to be derogatory to other developers.

Mr. Shibley: I didn't suggest you were; I
was just suggesting that you would be your aggressive self in trying
to get this contract for Canada Square.

Mr. Moog: No question about that.

Mr. Shibley: Yes. And in the course of
that discussion, did you not talk financing with Mr. Gathercole?

Mr. Moog: Nothing specific, there wasn't
time.

Mr. Shibley: Not in
making specifics, did you
talk to --

Mr. Moog: I said that we would do the
financing, the construction, the management, we would give him the whole
project and that we would be ideally suited to do that at a very good
rental rate to Hydro.

Mr. Shibley: I see.

Mr. Moog: He only half listened; he just
met me and that was about it.

Mr. Shibley: How did that meeting come about?

Mr. Moog: Mr. Candy asked me to meet the
chairman.

Mr. Shibley: I see. I feel I have to ask
you this again in the context of what's evolved from your file as
to the financing within that month, and I don't want by asking you this
question to suggest that I expect any different answer, but you did have

July 25, 1973

(Mr. Shibley)

"
a note in your diary on the 25th of November, at 3 o'clock, Bill Davis re Xmas ". Was there any communication with your and Premier Davis on November 25 referable to the head office building?

Mr. Moog: Never.

Mr. Shibley: All right. Then, in the same notes on logistics, at that time, Mr. Moog, the only bank ~~had~~ you

(Tape H-1431 follows)

July 25/73

3:45 - 3:50 pm

Q.B.

(Mr. Shibley)

~~Mr. Moog~~, the only bank you were dealing with was the same Swiss bank in Zurich that we've been dealing with.

Mr. Moog: Which time?

Mr. Shibley: November 1971. Is that correct?

Mr. Moog: Was I dealing ~~at~~ at that time with that

Swiss bank?

Mr. Shibley: Yes.

Mr. Moog: Yes.

Mr. Shibley: That was the only bank you were dealing

with in Switzerland?

Mr. Moog: In Switzerland, Yes I would think ~~if~~ so, yes.

Mr. Shibley: And it was the only bank that you continued to deal with until the date of your submission on January 24, 1971. Is that not so?

Mr. Moog: I think I made reference Mr Shibley that

I ~~also~~ did deal with other people in Switzerland; they are not bankers, they are extremely well connected, they are good friends of mine and I got some information about other ways of financing in Switzerland.

Mr. Shibley: Yes, but as at the date you made your submission, wherein, and perhaps I should have it produced to you. Exhibit 61, and I ask you to look, members of the committee, at that exhibit with me. It is an important document. At page 5 of the exhibit. You will notice Mr. Moog on that page you said in your submission - "Our tentative financing arrangements involve obtaining \$20 million in Swiss francs -at a interest rate of 6-1/2 per cent per annum and the balance in either US or Canadian funds at an interest rate of approximately of 7-3/4 per cent per annum. Based upon these arrangements the rental rate would be \$4.92 per square foot per year. These arrangements

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3:45-3:50 pm
C.B.

(Mr. Shibley)

have not been finalized and will require your full cooperation in assisting us to set up the necessary ~~xxx~~ corporate structure to be able to complete them. If we are unable to borrow the required funds at these favourable rates there will be a pro-rata increase in the rental rate up to a maximum of \$5.25 per square foot per year. As set out in the form of lease attached the rental rate will be adjusted either up or down from time to time to take into account fluctuations in the exchange rates between the Canadian dollar and the currency or ^{EN} currencies in which the loans are made. "

Now then when this submission was made Mr. Mood, to what financing were you referring when you said, \$20 million in dollars in Swiss francs at an interest rate of 6 -1/2 per cent per annum?

Mr. Mood: I was thinking of some Swiss financing.

Mr. Shibley: Were you thinking in particular of the financing available from the Swiss bank that you had visited on August 13, 1971 with Premier Davis?

Mr. Moog: No I was not thinking of that anymore.

Mr. Shibley: You'd abandoned that.

Mr. Moog: I considered that deal pretty dead once I got that final letter you just read. But I was aware that there are other sources in Switzerland which would have moneys available and which hopefully would not be as tough in their terms as this, well we described it yesterday, how the large bank had outlined. They were very inflexible. And I might, Mr. Shibley, perhaps I can help you and the committee to just deal with this matter about terms in our financing, since we have now got, well I don't know the phraseology, I suppose the cat amongst the pigeons. ¶

H 1431 - 3

July 25/73

3:45 - 3:50 pm

C.B.

(Mr. Moog)

If you borrow money in Switzerland and you borrow it from what I would call a bank of the magnitude and status we've been discussing earlier, they are very inflexible in their rates and I have had discussions with people in Switzerland and I know that other banks would be more flexible and they may charge a higher arrangement fee or something like that, but perhaps they would accept a better amortization term; and we were very much concerned about amortization terms, if we were to use this financing and that bothered us. I might just say that if you, just to throw some light on the subject, because I think it is important that it is understood. In the Y and R proposal, there is a reference that the ^{LENDING} ~~variable~~ rate might be adjusted. ~~As a matter of fact...~~

H1432 to follow

July 25, 1973
3.50-3.55 pm
V.H.

(Mr. Moog)

~~in our proposal there is a reference that the rental rate~~
~~might be adjusted.~~ As a matter of fact, I read it as a
request every ten years. If we ~~were to~~ ^{were to} get -- and I know why
~~that is in because~~ ^(even though we) ~~we were unable to~~ ^(assure them) ~~assure them~~ that Y & R
is ~~not~~ ^(largely) German-owned, it is, and, therefore, the Hydro building
would have been largely German-owned. That was in because
I think that they would have had their money from Germany;
they are ten-year ~~ten~~ terms in Germany. In Switzerland,
they are 15-year terms. What bothered us was that ~~there~~
were no amortization possibility. If we dealt with ~~another~~ ^(the)
Swiss bank, which would have been able to arrange for us
amortization payments, and we were hopeful to do that at
that time ~~at least we had feelers out, let's put it that~~
way ~~then I think we would have been able to follow up that~~
route.

Mr. Shibley: But what Swiss bank did you have in
mind, without naming it; when you made your submission on
January 24, 1971, was there a Swiss bank which was indicating
to you that it would provide the financing for Hydro's head
office building?

Mr. Moog: It was just a tentative thought in our
mind that we had to borrow money from Switzerland because the
American market did not look very ~~promising~~ promising at that time.

Mr. Shibley: All right. ~~It was a~~
tentative ~~thought~~ ^(thought) but was that tentative ~~based upon your~~ ^(thought)
negotiations with the same Swiss bank that you had visited?

Mr. Moog: Not this ~~bank~~ ^(bank) anymore, no.

Mr. Shibley: It was another one?

Mr. Moog: It was another source of financing I
had in my mind, knowing what the financial market ~~was~~

Mr. Shibley: But you had yet ~~any~~

Mr. Moog: I had nothing definite.

Mr. Shibley: You had yet to communicate with them?

Mr. Moog: I had yet -- I had never made contact with
a bank, no.

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3:50-3:55 pm
V.H.

Mr. Shibley: So that as at January 24, 1972, when you made your submission, the only Swiss bank to which you had made any communication referable to the head office was the same one as you had visited in August? Is that right?

Mr. Moog: I ~~do~~

Mr. Shibley: As of January 24, 1972 ~~day~~

Mr. Moog: The only one I had communicated with was that one, yes. That's right.

Mr. Shibley: That was the only bank?

Mr. Moog: Yes.

Mr. Shibley: So when reference was made in your submission to \$20 million Swiss at six and a half percent, the only bank you could have had in mind at that time ~~day~~

Mr. Moog: No.

Mr. Finlayson: No. No. He didn't say that.

Mr. Moog: I considered that issue dead after I had that last letter in that famous file.

Mr. Shibley: But you nevertheless continued to represent to ~~day~~

Mr. Moog: Certainly, it stuck in my mind that ~~there is money in Switzerland~~ ~~they might be interested~~ and I would like, ~~as~~, if everything else checked out, to continue at least looking at it, providing I couldn't get decent sources, decent funding in North America.

Mr. Shibley: I would like you shown exhibit 64 ~~see~~

Mr. Bullbrook: Just before you get to that, would you ask the witness what he meant by the words "arrangement"?

Mr. Moog: ^{Tentative} ~~Simple~~ financing arrangement, involved obtaining.

Mr. Bullbrook: I recognize that they are tentative; that is they haven't been confirmed or committed but as I understand it, it is not referable to the bank ~~see~~

Mr. Chairman: Can you take the ~~microphone~~ ~~the witness~~ Mr. Bullbrook?

Mr. Bullbrook: I am sorry ~~that~~ it is not referable to the bank, and I accept the witness's evidence in this respect, ~~that~~ ^{not} it is referable to the bank that he and the

July 25, 1973
3.5-3.55 pm
V.H.

(Mr. Bullbrook)

Premier originally visited, and he hadn't had any dealings with other banks. And I believe his evidence ^{to be} ~~showed~~ that it was a thought ^{I think that} ~~I didn't say~~ it was the word used. I am not in any way attempting to chastise, I just wondered what you meant by the word "arrangement"?

Mr. Moog: Well, I know the ~~the~~ Swiss money market and I had occasion to check it out ~~and~~ I knew that somehow, ~~that~~ if one wanted to ~~be~~ be persistent enough, one could get money from Switzerland. Perhaps one had to deal if I may ~~I~~ I don't ^{say} ~~mean~~ that with any ^{dis} ~~dis~~ respect to any Swiss financial institutions ~~with~~ with a house of not quite the same status ^{helping} which would then take a different approach to ~~having~~ ^{assist} ~~assist~~ us, to ~~assist~~ financing in Canada by getting different sources of underwriting and that is what was in my mind. I also knew, of course, ~~that~~ I would have to ~~pay~~ pay a higher arrangement fee for that. It would, ^{in other words,} ~~either~~ be a smaller bank which would go out and hustle a bit more and somehow or other get the money.

Mr. Bullbrook: Mr. Moog, were I Hydro receiving this document, I would have concluded from those words "tentative financing arrangement" that there had been some bilateral involvement ~~too~~.

Mr. Moog: I'm afraid not.

~~XXXXXXXXXX~~

Mr. Finlayson: ~~These arrangements have not been~~ finalized. I require your full co-operation ~~too~~.

Mr. Bullbrook: I want to make it ^{completely} ~~completely~~ clear that I recognize that it ~~isn't~~ confirmed.

H-1433 follows

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3.55 - 4.00 p.m.
M.R.

(Mr. Moog)

~~I'm afraid not.~~

Mr. Finlayson: These arrangements have not been finalized. I'll require your full cooperation.

Mr. Bullbrook: I want to make it absolutely clear that I recognize that it isn't confirmed and Mr. Walker was very kind in pointing out tentative and I recognize that Mr. Finlayson points out and I accept it. It wasn't confirmed. I just want Mr. Moog to ...

Mr. Chairman: ^{HAVE THEY} ~~Has it~~ even been made?

Mr. Bullbrook: Pardon me?

Mr. Chairman: Have they even been ~~was~~ commenced?

Mr. Bullbrook: The word "arrangement" to me connotes at least a positive action, not necessarily concluded but as I understand the evidence, this was speculative bordering on the hypothetical.

Mr. Moog: Perhaps I had a lot of trust in myself being able to do it, Mr. Bullbrook ...

Mr. Bullbrook: Yes.

Mr. Moog: ...but perhaps that is the best way I should put it.

Mr. Bullbrook: Thank you, Mr. Shibley, for permitting those questions.

Mr. Shibley: Well, Mr. Moog...

Mr. ~~Mr~~ Renwick: Mr. Chairman, just before you let him go on, I'd like to get caught up on a couple of points. On that specific point, have you financed in Switzerland or in Europe before?

Mr. Moog: I think I mentioned yesterday that I had financed in Europe quite some years ago.

Mr. Renwick: But not in connection with your development company. Is that - am I correct?

Mr. Moog: Well, it was a different development company. But I, at that time, did have a large ownership of that particular company. I did finance in Europe before.

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M.R.

Mr. Deans: Did you not say land assembly?

Mr. Moog: Yes, which is even more difficult to finance.

Mr. Renwick: But it's some years since you have financed in the European market?

Mr. Moog: That's right.

Mr. Renwick: Let me deal with - just to clear up, if I may, Mr. Shibley, three or four points that - perhaps you were going to come back to them, Mr. Shibley, and if you were, just interrupt me because we don't need to have my repetition. You recall the - or you probably have read the Premier's evidence that when he came home ...

Mr. Moog: I have not, Mr. Renwick. I'm sorry.

Mr. Renwick: Well, perhaps you are aware of it or let me state to you that the Premier stated that he did not discuss or refer to his visit to the Swiss bank with you on August 13 with anyone, either in the government or otherwise. The inference I got was that he treated it as a purely private call which he had made for his own purposes. Did you have occasion to discuss your visit to that bank with anyone?

Mr. Moog: No.

Mr. Renwick: In your organization...

Mr. Moog: No.

Mr. Renwick: ...or elsewhere?

Mr. Moog: No.

Mr. Renwick: So that until ...

Mr. Moog: Mr. Renwick, to be completely correct, I think I told the joke about the flat tire and how we rushed into the bank, when I came back because I just found it very amusing, that's all.

Mr. Renwick: Yes. But from the point of view of the fact that you and the Premier had visited the bank was for your reasons ...

Mr. Moog: For my reasons.

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3.55 - 4.00 p.m.
M.R.

Mr. Renwick: ...and for his reasons...

Mr. Moog: That's right.

Mr. Renwick: ...treated by each of you as a private visit?

Mr. Moog: Yes.

Mr. Renwick: Now, ~~blank on tape~~

Mr. Moog: ~~and~~ and of course it was - I may just add, I don't want to say anything wrong, I may just add the brochure was sitting on my desk.

Mr. Renwick: Oh, yes I understand that and I understand that you had correspondence with the bank...

Mr. Moog: Right.

Mr. Renwick: ~~which~~ which referred to the - to your visit but ...

Mr. Moog: Yes.

Mr. Renwick: ~~but~~ but that would be private as between you and the secretary in your office ~~and~~

Mr. Moog: Yes.

Mr. Renwick: ~~who~~ who dispatched your mail.

Now, this is the part Mr. Shibley, which you may be coming back to and if you are coming back to it I'd like to - you to interrupt me. On Exhibit 26 this exhibit - the notes re logistics of head office project - I take this notes of Mr. Sissons of that date to be a matter of urgency, it's an urgent memorandum or an urgent note wanting a decision. Can you, Mr. Moog, assist us at all as to why Mr. Sissons, in that memorandum, would refer so specifically to the "so favourable a rate of financing from him and so favourable an end rental" ~~and~~

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4 - 4.05 pm

H 1434 - 1

AA

(Mr. Renwick)

~~so favourable a rate of financing from him and so favourable an end result~~ that we chose him to participate with the original architects in the redesign and construction of the building."

Now, you may not know Mr. Sissons

Mr. Moog: I didn't know him at that time at all.

Mr. Renwick: No, I know that. I realize that.

But certainly Mr. Sissons is not a man given to broad generalizations. He is a very effective witness as he was.

Mr. Moog: ~~Admittedly.~~ I'm sure.

Mr. Renwick: And this meant something. Now, can you help the committee, and bearing in mind that it must have originated with you, can you give the committee any assistance ^{as} to the kind and nature of information that would, whatever its method of transmittal to Mr. Sissons, result in Mr. Sissons writing this memorandum, which has up in the corner, "Mr. Gathercole, ~~has~~ discussed, ~~We~~ will stand ready for a meeting." ~~And~~ I draw no conclusion as to whether the discussion took place prior or after Mr. Sissons drafted this memorandum, or when that note was put on it. Can you help as to how that kind of information got to Mr. Sissons which would permit him to write this kind of urgent, specific, definite memorandum about this matter?

Mr. Moog: I really didn't know anything about the Hydro hierarchy until I learned a bit about it through these hearings, so I am afraid, Mr. Renwick, I would be speculating and that would really not be good.

Mr. Renwick: Well, I don't want you to speculate

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AA

(Mr. Renwick)

about anything. What I am anxious to know is that I take it from your evidence to date that the only person who could have communicated to someone in Hydro the kind of information, on the basis of which a skilled management person such as Mr. Sissons could make this kind of definite statement, would be yourself?

Mr. Moog: Oh, I am sorry. It would be MR.

Candy, in my opinion.

Mr. Renwick: No, I don't mean that you conveyed it to MR. Sissons, but the source of the information must have been you. Would you agree with that?

Mr. Moog: Well, Mr. Candy was - he saw the brochure and I am sure ^{that} 6-1/2 per cent ~~←~~.

Mr. Renwick: May I ask you to look specifically at this memorandum, Mr. Moog, exhibit number 26, on page 2?

Mr. Chairman: Can you find it there, Mr. Moog?

Mr. Moog: I'll try, Mr. Chairman. Which paragraph?

Mr. Chairman: It's headed up "Notes re Logistics".

Mr. Renwick: The first complete paragraph on page 2.

MR. Moog: "We are in the very difficult position!"

Mr. Renwick: Below that. "On all of these grounds" but skipping that part of it. The third sentence, "I think we are in the position of having to select the developer in whom we have complete confidence, and to support this decision by the fact that we have received so favourable a rate of financing from him and so favourable an end rental that we chose him to participate with the original architects in the redesign and the construction of the building."

Now that language, used by Mr. Sissons, in this memorandum, which he is standing ready with the chairman to discuss, and the note of urgency in it, means that there is

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4 - 4.05 pm

H 1434 - 3

AA

(Mr. Renwick)

specific information which has come to Hydro, presumably through Mr. Candy, from you, about these matters~~ed~~. Now, I am asking you if you can help us as to the kind of specifics of financing information or rental information that would have led Mr. Sissons to write this memorandum, bearing in mind that I think from your evidence so far you would be the original source?

Mr. Moog: Perhaps it might assist you, Mr.

Renwick, if we read the next ~~sentence~~ sentence I have just found where it says, referring to OISE again, "and the very favourable leasing and maintenance rate." Perhaps there was - I am really ~~speculating~~ ^{speculating} with you. It could be that there is reference to OISE's favourable rate of leasing and financing and maybe a conclusion is drawn that they would get the same, Because that is really what Mr. Candy asked me on his first interview or his first meeting with me, whether we could sort of do it again.

Mr. Genest: Mr. Chairman.

Mr. Renwick: Well = yes.

~~Mr. Genest: I am sorry, Mr. Renwick. I am informed by Mr. Sissons, who is sitting right here~~

H 1435 - 1 follows

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4.05-4.10 pm
V.H.

~~Mr. Genest: Mr. Chairman?~~

~~Mr. Chairman: Yes?~~

Mr. Genest: I am informed by Mr. Sissons, who is sitting right here, that at the time he wrote this memorandum, he had ~~was~~ absolutely no specific information of any kind as to any rental being offered by Canada Square except what had been gleaned from an examination of the OISE transaction.

Mr. Renwick: Well, let me pursue this, just to clarify -- to bring it to a conclusion with Mr. Moog. I think ~~we~~ will probably have to recall Mr. Sissons on this matter. I take it, Mr. Moog then, from your evidence, that Mr. Shibley has dealt with you with the meeting with Mr. Gathercole and Mr. Candy, which was arranged by Mr. Candy at his suggestion, and that nothing but generalities were discussed at that brief meeting with the chairman? I take that to be your evidence?

I take it also to be your evidence so far that up to this point in time your, for practical purposes, your only source of ~~only~~ contact with Hydro was Mr. Candy. There may have been somebody else at an earlier date -- I think Mr. Dean may have had a ~~few~~

Mr. Moog: No.

Mr. Genest: No.

Mr. Renwick: No? Well, the only contact was Mr. Candy?

Mr. Moog: Right.

Mr. Renwick: Right. Now is it your evidence that any financing information that you gave to Mr. Candy, ~~was~~ which found its way to Hydro, apart from furnishing copies of the OISE document, which I don't know ~~whether~~ you furnished or whether they got from OISE months before, that you gave him no information of a specific nature

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V.H.

(Mr. Renwick)

relating to financing during the month of November?

Mr. Moog: Nothing more than what I said earlier.

Mr. Renwick: Nothing about rates of interest? Or amounts that could be borrowed in Switzerland?

I would show to the brochure.
Mr. Moog: Mr. Renwick, ~~to be sure~~ I am sorry,

~~you~~ do not have a copy but we have to refer to it. ~~But the~~ *The brochure,* ~~sure,~~ right on the front page, refers quite specifically to the amount and to the rate of interest and, of course, to the term, which I just discussed, quite specifically.

Mr. Renwick: Now

Mr. Moog: And it is very easy to just take that as gospel if you ~~wish~~ *wish*.

Mr. Renwick: And at this point in time, you are saying that during November, there was no discussion of any kind ~~of~~ about end rental?

Mr. Moog: I don't think there was. I can't recall that.

Mr. Renwick: Thank you, Mr. Chairman.

Mr. Chairman: Mr. Newman, you indicated; Mr. Deans, I would like to take a break.

Mr. Deans: Can I ask one question related to that ~~that~~ *they*? ~~It's~~ very short.

Mr. Chairman: ~~XXX~~ Right.

Mr. Deans: I want to ask, simply, did Mr. ~~Deans~~ *Candy* having looked at the prospectus and looked at the interest rates, ask whether or not, with those kinds of rates, Hydro might be able to expect a similar kind of arrangement as ~~that~~ *which* was gained by OISE?

Mr. Moog: I think that is not an unfair assumption, Mr. Deans. That's quite possible.

Mr. Deans: I am trying to understand ~~any~~

Mr. Moog: I am trying to help you.

Mr. Deans: I know you are.

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V.H.

Mr. Moog: Let me try to construct this with you and I think we will find an answer. The brochure was there; the interest rate looked very favourable; construction costs by that time had ^(quite a bit) risen but all on balance, I would think that he would have hoped that they would get as favourable rate. I think that is a fair assumption.

Mr. Deans: Do you recall or will you take the time during the break to try to recall? ~~am~~

Mr. Moog: Oh, please, I'll do my best.

Mr. Deans: That's all.

Mr. Chairman: Do you want to wait until after we have a break, Mr. Newman?

Mr. Deans: I'll wait.

Mr. Chairman: All right, Mr. Deans, we will come back to you. Mr. Newman.

Mr. W. Newman: Just a short question, Mr. Chairman. Coming back to exhibit 61, Canada Square's proposal re new head office building, page 5. When you made the proposal, Mr. Moog, were you encouraged by your friends and connections in Switzerland who indicated to you that probably you could arrange this \$20 million financing?

Mr. Moog: I had good reason to believe that if I ^(incredible) tried hard enough ~~and would get enough feathers~~ ^{and so on} that I could probably be successful, yes.

Mr. Chairman: Ladies and gentlemen, just before we break, you will all be saddened to know that I have received a message that ~~the~~ former Prime Minister of this country, ~~Mr~~ Louis St. Laurent, passed on today. Sorry to have to relay that to you.

The committee recessed for 15 minutes.

H - 1436 - 1

Mr. Chairman: Ladies and gentlemen, I call the meeting back to order. Mr. Shibley? No, I am sorry, it is not Mr. Shibley, I undertook to let Mr. Deans speak again, did I not, Mr. Deans?

Mr. Deans: Yes, Mr. Chairman, I don't intend to pursue it at any length other than ^{that in} listening to the questions and in looking at the document, exhibit number 26, I was asking Mr. Moog whether he could recall the conversation with Mr. Candy. Mr. Moog initially seemed to feel that the financing was not discussed in any detail and I do not know what he considers detail, and ^{therefore} that causes me to have some difficulty, ~~and~~ I wanted to know whether he could recall whether in discussing the obvious matters in the prospectus he could recall whether Mr. Candy had referenced that with the OISE building and had inquired about the likelihood of Hydro obtaining similar rates since, I assume, he might have asked whether those rates compared at all with the rates of money at the time of the OISE construction or whether he had inquired whether or not he might be able to expect similar kinds of rates from Canada Square in the development of the Hydro building?

Mr. Moog: I think he was quite interested to have a rental rate which would be equivalent to OISE, that is quite correct, Mr. Deans, and I told him that it appeared that we could do that, that we could come up with as good a rate as OISE.

Mr. Deans: You do recall telling him that you felt you could come up with a rate comparable with that -----

Mr. Moog: I think I said that to Mr. Candy at one time or another, yes.

Mr. Deans: And you think it was said at that time?

Mr. Moog: Well I would suppose so, I really don't know exactly.

Mr. Chairman: Thank you, Mr. Deans. Mr. Newman, you were through, I believe?

Mr. W. Newman: Yes.

H - 1436 - 2

Mr. Chairman: Then, Mr. Shibley, back to you now.

Mr. Shibley: Mr. Moog, I am sitting back and I hope everyone will oblige me by nobody sitting behind me for the next few minutes. I want to take you - I have had the opportunity during the recess to look at the original documents in this file, and it appears that the first document sets out conditions for a foreign loan issue in Switzerland and it looks like just a runoff of many such listings, correct?

Mr. Moog: I believe it sets out rates, does it not? I looked at it quickly on the way down.

Mr. Shibley: Yes, commissions, taxes add expenses, that sort of thing.

Mr. Moog: Right.

Mr. Shibley: Right. The next document is a prospectus and it is in printed form and it is obviously an original of the printed form, it is not a photo-copy, is that correct?

Mr. Moog: That is right.

Mr. Shibley: To ~~also~~ with the next document is another copy of a second prospectus and a third document are your handwritten notes in ink. It appears to be your own handwriting and an original document, is that correct?

Mr. Moog: ^{I am sure} ~~absolutely~~, that is my own handwriting, yes.

Mr. Shibley: The next document is the one listing the hierarchy in the bank and that is in your original handwriting, it is not a photocopy?

Mr. Moog: Well I don't think so, no.

Mr. Shibley: Then there is the letter of September 9, 1971. This is a letter you had written to one of the Swiss bankers and it appears to be a photocopy of the original letter including your handwritten signature. Would you agree with me as to that?

Mr. Moog: I would think so, yes.

Mr. Shibley: Then the next document is the one of September 21, 1971 - I WILL come back to that - and the next one

July 25, 1973
4.35-4.40 p.m.
M.F.

H - 1436 - 3

(Mr. Shibley)

is your letter again to the Swiss bank of November 10, 1971, and it also appears to be a photocopy of the original including your handwritten signature on it.

Mr. Moog: I would think so, yes.

Mr. Shibley: The document of November 18 from the bank to you is an original and so also is the document which is the last one dated May 15, 1972, from the bank to you. It is an original.

Mr. Moog: Uh-huh.

Mr. Shibley: Now have you some explanation as to why the copies of your letters of September 9 and November 10 to the Swiss bank are photocopies of the original, including your signature?

Mr. Moog: That is standard practice in our office. We just type a letter and take a copy of it, that is all.

Mr. Shibley: Your standard practice is not to prepare a carbon copy?

Mr. Moog: We don't use carbon copies at all.

Mr. Shibley: I see. And that was your practice in 1971?

Mr. Moog: Yes, sir.

Mr. Shibley: Who would have prepared these letters for you at that time?

Mr. Moog: I would think my assistant.

Tape H - 1437 follows

July 25th, 1973

4.40 - 4.45 pm

H 1437 - 1

AA

(Mr. Shibley)

Mr. Shibley: ~~Who would have prepared these~~
letters for you at that time?

Mr. Moog: ~~Well I would think my assistant.~~

Mr. Shibley: Who is that?

Mr. Moog: My secretary, Mrs. Smith.

Mr. Shibley: Is she still with you?

Mr. Moog: Yes, she is.

Mr. Shibley: Now, again, I am not . . .

Mr. Moog: I know what you are thinking. Ask

Mr. Walker.

Mr. Walker: Not MR. Don Smith.

Mr. W. Hodgson: Not Smith of Ellis-Don's

wife.

Mr. Shibley: There is one further letter, Mr.
Moog, the one from you to the Swiss bank dated September 21.
I am sorry, from the bank to you, from the bank to you dated
September 21, 1971.

Mr. Moog: Yes.

Mr. Shibley: Have you examined this document
recently?

Mr. Moog: I haven't had it in my hand for quite
a while.

Mr. Shibley: Would you come up here and look
at it please.

MR. Finlayson: Am I allowed to go along?

Mr. W. Newman: Mr. Chairman, while we are
waiting, maybe you could sometime in the near future examine
our terms of references laid out for this committee to see
if we are adhering somewhere in the neighbourhood of our terms
of reference. May we be looking forward to some sort of

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H 1437 - 2

AA

(MR. W. Newman)

future target dates. I realize it is a dangerous thing. WE never meet them but it might be a good idea to think about them.

Mr. Chairman: WELL, I have been, Mr. Newman, and I think it is worthy. I think the committee itself may be taking a look at this again shortly.

Mr. Deans: What was that all about?

Mr. Shibley: I don't want any

Mr. Deans: What was that all about?

MR. NEWMAN ~~(S)~~ : You must come to the meetings.

Mr. Chairman: Mr. Newman asked me a question. He said while the others are in conference there can we look at our target dates and relevance.

Mr. W. Hodgson: Sometime, he didn't stress it.

Mr. Chairman: No, not right now and I said, yes
~~yes~~ I thought we could do it again sometime soon. I think he is concerned with relevance and where all we are going but the committee can look at this again. We didn't say when and he certainly didn't say now.

Mr. Shibley: Mr. Moog, on the letter that I have shown you from the Swiss bank to yourself, September 21, 1971, the upper right-hand portion of it ^{has} ~~has~~ a part that is missing.

Mr. Moog: I just noticed that, yes.

Mr. Shibley: Could you give any explanation as to what brought about that condition of this document.

Mr. Moog: I don't know what it was. I haven't ~~had~~ had that file apart for quite some time.

Mr. Finlayson: It appears to be a burn of some kind.

Mr. Shibley: Yes.

Mr. Finlayson ^B: I have no explanation for it.

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4.40 - 4.45 pm

H 1437 - 3

AA

(MR. Finlayson)

either. I don't know.

Mr. Moog: I am very sorry, ^{Mr.}Shibley, I don't know.

Mr. Shibley: As Mr. Finlayson has said, it appears to be a burn of some kind.

Mr. Moog: Yes.

Mr. Shibley: You have no explanation for it.

Mr. Moog: I am afraid I can't help you.

Mr. Genest: A hot letter.

Mr. Finlayson: Mr. Shibley showed that to me first and actually the way the file is put together with a heavy metal brad across it, you don't ~~see~~ notice those things until you take the brad off, and I believe that you told me that Mr. Bell had noticed that when I gave him the file and he ~~took it~~ apart in order to make a Xerox of it, so . . .

Mr. Shibley: Mr. Chairman, I wanted to put all of that on the record in that the originals are not to be exhibited without a fuss, but I think you know as much about the documents now as need be. - I will be dealing with the May letter in a short time when I reach that point ~~chronologically~~ chronologically, which is the only document - just while I am at this, Mr. Moog, we have literally covered every document in that file save and except the letter of May . . .

Mr. Moog: That's right.

Mr. Shibley: . . . 1972, and I will cover that with you ~~later~~ later. I want to go back, however, to the letter of November 18, from the bank to you and I note that they are responding your enquiries as to the possibility of getting a loan amortized over 15 years. So that it wasn't the 15 years that was bothering you. It was the need to amortize. Am I understanding that correctly?

July 25th, 1973

4.40 - 4.45 pm

H 1437 - 4

AA

(Mr. Moog)

Mr. Moog: If you study that, you will find, I suppose, there is balloon payment at the end of the term.

Mr. Shibley: I could have heart failure up here. Go ahead.

Mr. Chairman: ~~You may get heart failure. I am going to get a stiff neck.~~

Mr. Shibley: ~~Yes, go ahead.~~

H 1438 - 1 follows

July 25/73

4:45 - 4:50 pm

C.B.

(Mr. Shibley)

Go ahead.

Mr. Chairman: You may get heart failure, I'm going to get a stiff neck.

Mr. Genest: Must have been....

Mr. Shibley: Yes, go ahead.

Mr. Bullbrook: What was it?

Mr. Moog: It is the balloon payment at the end which bothered us and I believe out of the ~~xxx~~ correspondence you will see that we were trying to get the bank to give us just what amortization terms.

Mr. Shibley: Right.

Mr. Moog: Because it is difficult to be confronted with a situation fifteen years later when you have to raise all of sudden, that much money. As a matter of fact, that is a very vital point and I'm glad we can discuss that. If we were to have had to accept that financing we would have had to establish a sinking fund. In order to meet our obligation in the 15th year. And the establishment of a sinking fund is a very costly matter because you do not get the interest rates which are applicable otherwise, you get a pretty small return on your funds because it is short term money and that bothered us. Our ^{rental} ~~enter~~ rate was a fixed rate and we didn't want to change that. I knew that Hydro looked at the OISE situation and ^{we} wanted to come as close as possible to that and we just didn't like those terms.

Mr. Shibley: It was the amortization feature though that was the real problem was it not?

July 25/73

4:45 - 4:50 pm
C.B.

Mr. Moog: That we thought was...a real problem./

Mr. Shibley: They don't have monthly....

Mr. Moog: Principle and interest payments, no.

Mr. Shibley: That's right. But the 15 years was not the problem.

Mr. Moog: Well again as I said earlier as Y and R & had said in their proposal, they would like to reopen their rental rate, corresponding to interest rate very ten years.

If we would have had to take this as it sits, well we thought about, at one time or another to ~~us~~ maybe approach Hydro and say "How would you like to have it reopen in 15 years", and pay us maybe twice as much then.

Mr. Shibley: Was that what was in your mind at the time you made your discussions with Mr. Candy in November 1971. It might still be open to negotiation whether the term would be 15 or 30?

Mr. Moog: Mr. Shibley I know this is difficult to understand and maybe I have to be a bit more elaborate on it. With that particular institution I think it would have been impossible to get them to bend and to come with an amortized plan of payment, and therefore, I never discussed any details with Mr. Candy at all.

Mr. Shibley: I realize that the amortization was a problem. But were you, when you made your submission even, were you prepared to think in terms of a 15-year term or a 30-year term of lease where the obligation to renew your funding after 15 years was going to be yours?

Mr. Moog: When we made the submission, I agree with you, yes ~~if~~ we thought that we would have to swallow that one.

Mr. Shibley: Yes.

July 25/73

4:45 - 4:50 pm

C.B.

Mr. Moog: And that was a big problem we were facing.

Mr. Shibley: So that...

Mr Moog: If we were going Swiss.

Mr. Shibley: Thats right. If you were going Swiss and you ~~was~~ could get over this amortization problem, you were prepared to take the risk of refinancing after 15 years, when you made your submission to Hydro.

Mr.Moog: When we made the submission if we were going Swiss yes, but it was one of those big question mark items, in my mind at least.

Mr. Shibley: Yes, I just want to get that clear now. So that it was a risk for refinancing after 15 years, you were prepared to assume?

Mr. Moog: Going Swiss, yes.

Mr. Shibley: Yes. And the difficulty was to overcome the amortization.

Mr. Moog: That would be another difficulty^{cu}.

Mr. Shibley: Well were there any others?

Mr. Mood: Well in our own mind there was the difficulty of refinancing of course.

Mr. Shibley: NO I mean were there any others in terms of dealing with Swiss financing. There is the two. There are amortization and the renewal after 15 years.

Mr. Moog: Yes the other thing which bothered me of course was I never was able to really ascertain what kind of an underwriting fee I would have had to pay, going through a smaller bank which as I hope I have made clear earlier would be more flexible but would also for that charge more money. That bothered me too.

Mr. Shibley: So that just dealing with the November 19 response you got, the problem it raised for you was the

July 25/73

4:45 - 4:50 pm

C.B.

)Mr. Shibley)

amortization problem.

Mr. Moog: Yes.

Mr. Shibley: And that was the one that you had
to...

Mr. Moog: That was the biggest problem yes, no
question about that.

Mr. Shibley: All right, I just wanted to understand
that. And you've already ~~said~~ said, I believe, that the only
Swiss bank with which you had been in communication as of
January 24, 1972, the date you made your submission was the
same Swiss bank that you had visited on August 13, 1971.

~~That~~
Mr. Moog: ~~That~~ ^{That} is correct.

H 1439 to follow

July 25, 1973

4:50 - 4:55 pm
JLP

(Mr. Shibley)

January 24, 1972, the date you made your submission, was the same
Swiss bank as you had visited on August 13, 1971.

Mr. Moog: That is right.

Mr. Shibley: I want to take you - oh, I had asked you
whether you had discussed with Candy the substance of what is in
the memorandum of November 25, Exhibit 26.

Mr. Moog: I'm sorry,

Mr. Shibley: To be fair to you, Mr. Moog, you were, at
least it's indicated in your diary that you called Candy on November
26, I'm sorry, the 25th,

Mr. Chairman: Exhibit 26.

Mr. Shibley: And then you had a meeting with him on
November 26 at 12 o'clock.

Mr. Moog: Yes, that's right.

Mr. Shibley: Did you take up with Mr. Candy the subjects
which were outlined in the memorandum of November 25, and you might
note ~~this is Exhibit 26~~

Mr. Genest: Which memorandum?

Mr. Shibley: That's Exhibit 26.

Mr. Genest: My favourite one as a matter of fact.

Mr. Moog: I think I said earlier that we discussed at
some detail the quality of the building.

Mr. Shibley: No, Mr. Moog, I want to help you on this ~~now~~
now. I want to know whether Mr. Candy or yourself, I don't know who
initiated the call on the 25th, discussed the matter, and on that
occasion set up a meeting for November 26, and at that meeting what
was discussed.

Mr. Moog: To my recollection, just the building project
as it sat; we talked about how to go further on with it. I'm very
sorry, Mr. ~~Shi~~ Shibley, I just cannot recall any specifics there.
We certainly discussed the project in detail.

Mr. Shibley: I see. Did he tell you on the 26th that at
a meeting on the 22nd, at which he was in attendance, and ^{by reason of} ~~there was further~~
^a ~~reasonable~~ further memorandum of the 25th, it very much looked like

July 25, 1973
4:50 - 5:55 pm
JLP

(Mr. Shibley)

you would be given careful consideration as the one Builder, one developer with whom Hydro would undertake negotiations.

Mr. Moog: I don't think he ever promised me anything like that Mr. Shibley.

Mr. Shibley: I know he didn't promise anything but I want to know whether he had any such discussion with you at that time.

Mr. Moog: No.

Mr. Shibley: I'm trying to understand, Mr. Moog, what you knew of what was happening in Hydro at that time, and I gather your line of communication with Hydro was Mr. Candy.

Mr. Moog: That is true, Mr. Shibley.

Mr. Shibley: Now, as of the end of November, they are at least thinking about dealing with you without seeking competitive proposals. And I wondered whether Mr. Candy discussed that with you when he met with you on the 26th?

Mr. Moog: Mr. Candy played it pretty close to the ^{WEST} ~~West~~. He tried to get the information he needed and he discussed with me the matters of the building itself. That was always the sum and substance of our meetings. I cannot recall anything else, I really cannot, Mr. Shibley.

Mr. Shibley: I see. Just going back to August, when you got back on August 25, you had talked to Candy on June 11 about your intention to look into financing when you were in Europe with the Premier that summer, and apparently you felt secure enough, or you felt it proper to mention that Hydro had approached you, when you were talking to the Premier in the latter part of August, have you any explanation as to why you did not have any follow-up conversation with Mr. Candy on August 25th to the effect that you'd been to a Swiss bank while in Europe and in the company of the Premier?

Mr. Moog: Mr. Shibley, no, I did not. I didn't think that that concerned Mr. Candy at all.

Mr. Shibley: I see. But you mentioned it to him on the 11th.

July 25, 1973
4:50 - 4:55 PM
JLP

Mr. Moog: That was the first meeting we had at which time I no doubt wanted to impress upon him that we were, I thought, pretty good in construction financing, raised that aspect.

Mr. Shibley: Did you also when you said you were going to Europe as an adviser to the Premier

Mr. Finlayson: Now, now, now, now, now!

~~Mr. Shibley: I'm sorry. When you said to him~~

~~Mr. Finlayson:~~

Mr. Shibley: I'm sorry, I withdraw the question. When you said to him that you were going to sit in on a meeting with a banker and the Premier, did you have in mind to impress upon Mr. Candy your friendship with the Premier?

Mr. Moog: I don't think particularly.

Mr. Shibley: Did you have it in mind to impress upon him the fact that the Premier had enough confidence in you to have you sit in on a meeting with foreign bankers?

Mr. Moog: I just made the statement, I'm very spontaneous in my statements as you might have seen by now.

Mr. Shibley: You were interested in obtaining this project for Canada Square,

Mr. Moog: Yes Sir.

Mr. Shibley: And wouldn't it be the most natural thing for you, having spoken to him about your relationship with the Premier and your pending trip, when you got back to mention what was of dominant interest in Mr. Candy's thinking, namely the financing and development of the new head office building?

Mr. Moog: Mr. Shibley, I just wanted to put him at ease that we could do all the things we promised to do, ~~that is all what I wanted to do with~~

(Tape H-1440 follows)

H-1440-1

(Mr. Moog)

~~We could do all the things we promised to do.~~ That is all that I wanted to do with Mr. Candy.

Mr. Shibley: Mr. Moog, I just want to get your evidence clear, and so as to be fair to you, you did feel free to mention those things to him in June. You had told him on June 11 that you hoped to check out financing. And by August 25 you had had your visit to the Swiss bank with the Premier. And you had received particulars from that Swiss bank as to the kind of financing available for the Hydro building.

Not
Mr. Moog: ~~THAT~~ for sure.

Mr. Shibley: Well I mean, in terms equating exactly with your submission, I'd like to understand why you didn't consider it necessary, let alone appropriate, to talk to Mr. —

Mr. Moog: He wasn't the man to talk financing with at all.

Mr. Shibley: I see.

If
Mr. Moog: ~~The~~ financing was to be discussed and Mr. Candy felt that it was necessary I am sure he would have brought somebody up.

Mr. Shibley: Did you talk to anyone else in Hydro?

Mr. Moog: I'm sorry, Mr. Shibley, I did not, and I have said this before.

Mr. Shibley: Did you ever have any conversations around August 25 with Mr. Dean? of Hydro?

Mr. Moog: No, sir. I didn't even know the gentleman until this meeting.

Mr. Finlayson: Hearing.

Mr. Moog: Hearing, I'm sorry.

Mr. Bullbrook: Sorry, before you pass on. Do I understand the evidence of Mr. Moog to be that the comment related to the trip with the Premier had no motive in attempting to impress Mr. Candy?

Mr. Shibley: That was your answer, was it Mr. Moog?

Mr. Moog: I believe that is what I said, yes. I would hope that ~~that~~ I am impressive enough myself with my company, Mr. Bullbrook I am sorry, but really —

H-1440-2

Mr. Bullbrook: Well since you make that response I take it then, from that response, that when dealing with governments in the acquisition of either development proposals or lease arrangements that you rely on yourself alone?

Mr. Moog: Oh, I would say so.

Mr. Bullbrook: You don't rely on any connection with people in either appointed or elected political position?

Mr. Moog: Well, Mr. Bullbrook, there was one question I would like to answer you when we come to another proposal ^{where} I would have very much appreciated politicians to assist me to create my Canadian Landmark building.

Mr. Bullbrook: Well I didn't intend to open that avenue right now. I just wanted to understand the evidence clearly in my mind. No motive in your mind at the time of your discussion with Mr. Candy

Mr. Moog: No sir.

Mr. Bullbrook: In referenc^{ing} the Premier

~~Mr. Moog: No sir.~~

~~Mr. Bullbrook: Was he attempt to influence~~

~~Mr. Moog: No sir.~~

~~Mr. Bullbrook: And your subsequent answer was that you relied on your own business?~~

~~Mr. Moog: That is right.~~

H-1441-1 follows

July 25, 1973
5.00 - 5.05 p.m.
M.R.

Mr. Moog: No, sir.

Mr. Bullbrook: ~~was~~ was to attempt to influence?

Mr. Moog: No, sir.

Mr. Bullbrook: Your subsequent answer ~~was~~^W that you relied on yourself to impress?

Mr. Moog: That's right.

Mr. Renwick: Mr. Chairman, could we say that it helped to put Mr. Candy at his ease to know that you had a ~~know~~

Mr. Moog: Mr. Renwick, you're terrific!

Mr. Renwick: ~~relationship~~^{relationship} relationship with the Premier of the Province?

Mr. Moog: Well, I said that in passing, yes, I did. I said in passing that I would go with the Premier on a trip.

Mr. Shibley: On the other side, Mr. Moog, ~~—~~

Mr. Moog: I said it in passing in the connection that I would find out about monetary markets in Europe.

Mr. Renwick: Yes, I wasn't reading anything ^{into} my remark. I was trying to understand the circumstances in which you would wish to put Mr. Candy at his ease.

Mr. Moog: Well, ~~—~~

Mr. Shibley: And on the other side of that ~~can~~^{can}, Mr. Moog, were you, when you raised the subject in German with that Swiss banker on August 13, intending to obtain any benefit from the presence of the Premier at that meeting respecting obtaining financing from them for the Hydro head office project?

Mr. Moog: Mr. Shibley, it's been said before that Hydro should stand on its own feet. I think a financial institution looks at Hydro, if they like them, they'll take them.

Mr. Shibley: You are not answering my question, Mr. Moog.

Mr. Moog: The Premier was there and that gentleman ~~was~~^{certainly} knew it and that was that. I ~~wasn't~~^{wasn't} wanted to find out whatever I could.

July 25, 1973
5.00 - 5.05 p.m.
M.R.

Mr. Shibley: Did you intend or expect that the presence of the Premier in that room while you were discussing the project of an Ontario Hydro head office building involving in excess of \$40 million would be a factor weighed by those two Swiss bankers?

Mr. Moog: I wouldn't think so.

The Premier isn't signing the note.

Mr. Shibley: I see. You had no expectations or intentions in that regard?

Mr. Moog: I wouldn't think so, no.

Mr. R.G. Hodgson: Mr. Chairman.

Mr. Chairman: Mr. Hodgson.

Mr. R.G. Hodgson: Would it be also fair to say that at that meeting you were only exploring; you weren't really examining and ~~any~~

Mr. Moog: Thank you, that is quite correct,

Mr. Hodgson, Thank you.

Mr. Shibley: And having explored, you followed up with the correspondence that we have been dealing with today?

Mr. Moog: That is right.

Mr. Shibley: And your exploration went to the extent of obtaining particulars of the kind of funding, precedent-type prospectuses, names of people with whom to deal?

Mr. Moog: Well, I met these gentlemen. That's who I wrote to.

Mr. Shibley: All right. I want to go on to ~~any~~

Mr. Bullbrook: Well, since you are on the line of questioning and we are going to ~~any~~

Mr. Shibley: I've been wanting to go on some time ago.

Mr. Bullbrook: I realize that. I realize that but you have to bear with this, I know.

Mr. Shibley: No, No. I think it's important.

July 25, 1973
5.00 - 5.05 p.m.
M.R.

Mr. Bullbrook: Since you are on this line of questioning and I think it's very relevant for us and I don't want to get into an unduly sensitive area, do you intend to examine, in connection with the file, the possibility as expressed by Mr. Hodgson yesterday ^{that} the Premier was mentioned in the file?

Mr. Finlayson: We ^{have} already referred to that.

Mr. Bullbrook: Other than the letter received from the Swiss bank?

Mr. Shibley: Well, there's more than one reference ~~any~~

Mr. Finlayson: There's more than one reference to the Premier but Mr. Shibley read those portions out when he was examining ~~any~~

Mr. Bullbrook: All right, then, I'll put it more directly. Are you prepared to inform us as to whether Mr. Moog referred to the Premier in any of his correspondence to the Swiss bank?

Mr. Moog: Yes, I did.

Mr. Finlayson: Yes, he did. It's all right ~~any~~

Mr. Shibley: I might - I think I can make this statement and, Mr. Finlayson, please perfect my statement if its in any way incomplete, but you have received, with the exception of the odd sentence wherein people send their regards, so to speak, naming names, the whole of the content of the documents in that file and including, I believe, all references therein to the Premier.

Mr. Bullbrook: I apologize to you, sir. I didn't make that notation and I should have. Had I had the record in front of me ~~any~~

Mr. Shibley: I read in as much as I felt I safely could and I read it slowly so that my friend could stop me if he thought I was going too far but, really, as a matter of transcript now you've got the whole of the substance of those documents, ~~xxx~~ save and except for names that might identify people or places or companies ~~any~~

H-1442 to follow

July 25, 1973
5.05-5.10 pm
V.H.

~~(Mr. Shibley)~~

~~that might identify people or places or companies.~~

Mr. Finlayson: I don't think we need discuss these anymore. You're quite right. The references to the Premier were all ~~set~~ ^{read} out and that was what Mr. Bullbrook asked.

Mr. Shibley: Okay.

Mr. Bullbrook: Thanks, Mr. Finlayson.

Mr. Shibley: I just wanted to make that clear.

I just wanted you to know that is the limit of the extent of any editing on my part in reading it in. I didn't want you to feel that anything material was left out including the name of the Premier.

Mr. Bullbrook: Exactly the purpose of my ~~my~~

Mr. Shibley: I realize that, that's why I gave you the response.

Mr. Bullbrook: Let it be recorded that had I had the document in front of me, I wouldn't have had to ask the question.

Mr. Shibley: Now can I go on?

Would you have produced to the witness exhibit 65, dated March 30, to which I ask members give their attention. Exhibit 65 and I direct your attention particularly, Mr. Moog, to paragraph 3 of that document.

Mr. Moog: Yes, sir.

Mr. Shibley: And it reads:

"The financing arrangements are secure insofar as Swiss capital is concerned at 6-1/2 per cent interest, plus government tax which would be absorbed by the developer; but the balance of approximately \$20,000,000.00 can be obtained from the Equitable Life in the U.S. at possibly 8 per cent interest, under which conditions the rental rate per square foot per year would remain at \$4.92."

July 25, 1973
5:05-5:10 pm
V.H.

(Mr. Shibley)

I ask you to note the date of that document, Mr. Moog, it's March 30, 1972, and it's Mr. Candy again reporting on financial matters for purposes of the file ~~and~~ I am particularly interested in knowing, firstly, did you inform Mr. Candy on or before March 30 that the financing arrangements are secure insofar as Swiss capital is concerned at six and half percent?

Mr. Moog: Well, Mr. Shibley, perhaps I should say this: After Mr. Candy saw the brochure and knew that there was a possibility to get money in Switzerland, I never said anything different ^(K. Rimo). So I am sure that he assumed that that would be the source of all financing.

Mr. Shibley: Well, what disturbed me the other day, ^{the} in exchange with Mr. Finlayson, is that he said that the financing was never Swiss ~~and~~ I had very much in mind but couldn't put my finger on it but I had in mind this memorandum ~~of~~ Mr. Candy wherein he said, "the financing arrangements are secure insofar as Swiss capital is concerned at six and half per cent interest". And it goes on and gives more specifics, "plus government tax which would be absorbed by the developer". Now had you discussed with Mr. Candy not only the securing of ~~the~~ capital, but the fact of government tax which would not be known to him as an architect, and had you discussed with him that you were going to absorb that tax?

Mr. Moog: That's quite possible that I ~~said~~ ^{said that}, yes.

Mr. Shibley: You had discussed with him the government tax, had you?

Mr. Moog: Yes, I told him that it would cost us some tax if we did go the Swiss route. That's right on that ~~too~~.

Mr. Shibley: Yes, you told him?

Mr. Moog: Yes.

July 25, 1973
5.05-5.10 pm
V.H.

Mr. Shibley: And you also told him that you would absorb that?

Mr. Moog: Yes, that's right.

Mr. Shibley: And did you also tell him that your Swiss capital was secure?

Mr. Moog: Well, I think that goes into the same realm of keeping Mr. Candy confident that we could organize the financing. ~~But~~ I suppose -- I don't know what words I used, Mr. Shibley, and ^{if} Mr. Candy interprets it this way, I certainly don't want to criticize him.

Mr. Shibley: Well, Mr. Moog ~~we~~ ^{you}

Mr. Moog: You never ~~we~~ have ^{your} secure financing until you get a commitment from a financial institution, Mr. Shibley. We did not have one.

Mr. Shibley: Mr. Moog, in your submission, it was made clear in your submission ~~we~~

Mr. Moog: ^{We had} tentative ~~we~~ arrangements.

Mr. Shibley: ~~we~~ that financing was tentative. You said in that document that "Financing arrangements involve \$20 million ^{Swiss} francs at interest six and half" and so on, ^{Based}

H-1443 follows

July 25, 1973
5.10-5.15 p.m.
M.F.

H - 1443 - 1

(Mr. Shibley)

~~that financing arrangements involve \$20 million in Swiss francs~~
~~at an interest of six and a half, and so on, based~~
upon these arrangements. These arrangements have not been
finalized and will require your full co-operation in assisting
to set up the necessary corporate structure" and I hope the
members will remind me to ask you what you meant by that latter
comment.

But then by March, by ~~March~~ 30th, Mr. Candy, who is the
conduit that you are employing to communicate with Hydro and ~~the~~
Hydro employing to communicate with you, is reporting to Hydro
~~that~~ what appears to be fairly precise information that the Swiss
portion of your capital funding of this building is secure and
beyond that that you had agreed to pay the government tax.
Now where did he get that information?

Mr. Moog: I am sure that I told him that we would have
a good possibility to get ~~Swiss~~ ^{Swiss} financing, Mr. Shibley, and if
we did get Swiss financing we would pay the tax. ~~So~~ ^{See} see, there
is a tax charge on it which is quite substantial, and I thought
I made it clear that whatever the cost of money is, whether it
is only the tax I am referring to here or whether it would be a
high underwriting fee, or whatever, would be our responsibility.

Mr. Shibley: Did you say enough to him to ~~say~~ ^{believe} that
the financing was secure, the Swiss portion of it?

Mr. Moog: Well I think, with respect, you get into the
realm of an architect hearing about financing and the person who
does know financing. I at all times assured Mr. Candy that we ~~will~~
~~were~~ organizing the financing and that there was a possibility
of doing Swiss financing. I certainly stated ~~that~~ that.

Mr. Shibley: You realize, Mr. Moog, that bearing in
mind your submission of January 24th had made it clear that your
financing wasn't then secure, ~~the~~ the follow-ups of information
~~xxxxx~~ provided to the Hydro people by Mr. Candy is a material

July 25, 1973
5.10-5.15 p.m.
M.F.

H - 1443 - 2

(Mr. Shibley)

change in that respect?

Mr. Moog: I am sorry the word secure sounds very *strong*
~~good~~ in here, I have to admit that, it does.

Mr. Shibley: Well are you telling me that - well when
did you discuss these matters with him between January 24 and
March 30?

Mr. Chairman: Jim Renwick says today.

Mr. Finlayson: Well it says "today" doesn't it?

"I discussed the four items in connection with the proposal" ----

Mr. Shibley: Yes, thank you. That is helpful, thank you.

Mr. Moog: I think Mr. Candy was seeking certain
information on that date and I gave him the information stated
herein that we would be prepared to build a building at 92 and a
half cents less per square foot, if it was to be a different
building. Our maintenance costs would be \$1.45, and I think when
he pressed me on financing -----

Mr. Renwick: Mr. Chairman, just so that Mr. Moog isn't
led into extemporizing about it, perhaps Mr. Shibley you would
refer to the preceding memorandum, exhibit 64, which are the
specific questions which Mr. Mink asked Mr. Candy -----

Mr. Shibley: I will have that produced to you, Mr. Moog.

Mr. Renwick: to deal with - well there were certain
general questions and then there were certain specific questions
related to the three developers.

Mr. Shibley: Are you looking at that March 27 memo?

Mr. Moog: I am sorry -----

Mr. Shibley: You will see where it hits into Canada
Square, the middle of the second page, "what portion of the rental
rate is attributable to maintenance? How would the annual rental
be affected? Three: How secure are the financing arrangements?
Four: What type of financing are they proposing?" and it does appear
that he then met with you on March 30th to fill in that information
asked for in three and four. Does that help you recollect telling

July 25, 1973
5.10-5.15 p.m.
M.F.

H - 1443 - 3

(Mr. Shibley)

him that your financing with the Swiss was secure?


Mr. Moog: I don't know that I used that word secure.

Mr. Shibley: Well Mr. Candy was specifically directed by Mr. Mink to inquire of you how secure your financing arrangements were and after his meeting with you he is reporting "the financing arrangements are secure insofar as Swiss capital is concerned at six and a half plus government ~~tax~~ tax, absorbed by the developer."

Now did you tell him that at that meeting?

Mr. Moog: In my communication with Mr. Candy I no doubt impressed upon him that we would be able to get the money, ~~that~~

~~I think I made specific reference to Equitable life as well as
it was stated anywhere.~~



Tape H - 1444 follows

July 25/73
5:15 - 5:20 pm
CA

H-1444-1

(Mr. Moog)

~~I no doubt impressed upon him that we would be able to get the money.~~ I think I made specific reference to Equitable Life as well, as it is stated in here; and I think, certainly, I informed him that we would pay any expenses which included the government tax if it was to be Swiss financing.

Mr. Shibley: Mr. Moog, this is what I can't understand.

Mr. Moog: Mr. Shibley, I am trying to recall what I said. I recollect always saying to Mr. Candy that we will get the financing; that we are thinking of this type of financing; that at this moment we still consider that as a strong possibility, ~~and~~ I probably assured him that ~~this~~ this is the type of financing we might be getting. But I did have another commitment at that time as you know.

Mr. Shibley: Well, quite apart from a commitment, you see, Mr. Moog, when I said the other day, and we were debating the relevancy of the file because Mr. Finlayson said the financing was never Swiss, and so the file was irrelevant; and this is what has bothered me since he made that comment. I said to you then "Well, that opens up another area of inquiry", and this is the area of inquiry I am on now.

Mr. Moog: I appreciate that, Mr. Shibley. I am trying to be helpful.

Mr. Shibley: Yes.

Mr. Moog: I can answer it best by saying simply that I considered financing my own, and if somebody asked me about it I think I would simply say "Just rely on us being able to produce it". ~~and~~ If I am pressed I might say, "Yes, there is a chance to get so much, and if we get Swiss financing, which we can get, because I was assured by friends of mine that I could get it if I tried hard enough and if I would pay whatever it costs on arrangement fees, then I probably then said "yes".

Mr. Shibley: Well, for that matter, if you could get over the amortization problem.

H-1444-2

Mr. Moog: No, I am not talking that bank at all, because that bank I had ~~no~~ ^{no more} communications with. I know that there are funds available in Switzerland, even at this very date; of course, there would be. ~~and~~ I think if I had to get them there I think I could produce them.

Mr. Shibley: Well ~~long~~

Mr. Moog: It is a fine line and I do not want to mislead anybody. I no doubt have assured Mr. Candy that the financing would be arranged by us; that we can get it; and he no doubt took out of that that it is secure. That is the best I can help ~~you~~ ^{with} you with. And I am trying ~~hard~~ to help you on that.

Mr. Shibley: Well, Mr. Renwick was very helpful in noting that this was one of the specific things that Mr. Candy was sent to ascertain from you.

Mr. Moog: Yes. I remember that he asked me the question.

Mr. Shibley: And he reports back it is secure, and he goes further and gives particulars as to obligations ~~for~~ ^{tax} for tax and so on. Did you tell him the Swiss portion of the funding was secure?

Mr. Moog: Let me use my own words of just a minute ago; that I assured him that we will get the financing; that I also assured him that we could get it in Switzerland, and that the interest rate then would be 6½ per cent. ~~and~~ Since I thought that if he talked to his financial people that one of the first things they would raise is who pays the expenses, because it is very expensive to get Swiss money to Canada.

Mr. Shibley: Yes.

Mr. Moog: ~~and~~ I assured him that whatever there is on cost, and I am sure I made reference to a government tax, I should have also said arrangement fees and so on, we would pay. So that there wouldn't be any charge to Hydro. Because I know that you can sometimes make a proposal, "We'll arrange money there and there, and you pay such and such." I did not say that. I said ^{that} that is all our responsibility, you really needn't worry about it. It is all effected in the rental rate any way."

H-1444-3

Mr. Shibley: I'm worried because, if I heard you right, when we read the transcript, it will not yet be clear because ~~we~~

Mr. Moog: It is my assurance versus his words, if I may just say that, "secure".

Mr. Shibley: Did you ~~see~~ you see, you said you assured him that you would get the financing ~~him~~ and that you should be able to get it in Switzerland. Now the memo, though, says that the Swiss portion of the financing was secure, and the balance of approximately \$20 million can be obtained from Equitable at possibly eight per cent. ~~Yes~~ He seems very definitive about the Swiss portion of the financing. Did he ~~say~~

Mr. Moog: If all strings broke, and if I could not get money in North America where I much prefer to finance, ~~as~~ as I have financed all my other projects in North America, excepting the land assembly subscription, I knew that I could get money in Switzerland at some very high cost. ~~And~~ I believe one of the other Hydro officials stated that a lot of people talk about Swiss money, but when you get really down to it and you pay all the costs, . . .

H-1445-1 follows



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5:20-5:25 pm

C.B

(Mr. Moog)

~~the Hydro officials stated that a lot of people I talk about~~
~~Swiss money, but when you get really down to it and you pay~~
~~all the costs~~ and you convert it into Canadian and the rest
of it, it really isn't advantageous, that's why we dropped it.

Mr. Shibley: I'd like to refer you to exhibit
85, dated July 19. Have you the document in front of you
Mr. Moog?

Mr. Moog: Yes sir.

Mr. Shibley: In the third paragraph you'll see
the last portion of it. "Canada Square now advised that they
anticipate all of their long term financing will be obtained
from Switzerland". Do you see that?

Mr. Moog: Yes I do sir.

Mr. Shibley: What's meant by that.

Mr. Moog: Well it's the same anticipation.

Mr. Finlayson: Just a minute now. That's not
a proper question, he didn't write that memo.

Mr. Shibley: Well Mr. Finlayson, do you want
me to take him through each time, did you talk to Candy and
is this source of information from Candy from you, and then
what did he mean by that, what information did you say to him?
Fine, we'll spend four times the time.

Mr. Finlayson: Just a minute, I don't know what Mr.
Candy meant by that. He had said in an earlier memo that it
was secure.

Mr. Shibley: All right.

Mr. Finlayson: YOU put in an interpretation secure
there.

Mr. Shibley: All right, Mr. Moog.

Mr. Finlayson: The witness tells me to shut up.

Mr. Moog: I'm sorry Mr. Finlayson, I don't want
to....

Mr. Shibley: YOur diary.....

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5:20-5:25 pm

C.B.

Mr. Moog: I want to be helpful and I want to say...

Mr. Shibley: Your diary...

Mr. Moog: I also said that we'll probably get the whole \$40 million in Switzerland, because at one time I had the idea that if we only get one \$20 million in one year, I can get \$20 million in one and another \$20 million in the next year, that's what we had to get.

You see if you deal with money matters, you really do not know where you can get your funds from until you on the otherside got a deal. We didn't have a deal.

Mr. Shibley: You had a deal, you had a meeting with Mr. Candy on the 18th. Didn't you?

Mr. Moog: Of course and I kept watching the money markets very carefully, of course I was.

Mr. Shibley: And you told him on the 18th, it appears from this memorandum that you were anticipating all of the long term financing would be Swiss.

Mr. Moog: Without looking up, when I told him what I did without a question at one time, I also say that there is another liklihood, if we have to go all Swiss or if we don't get moneys in North America, because I had difficulties with Equitable Life, because of a withholding tax problem. We can get into that - that I could conceivably borrow the total amount of \$40 million in Switzerland if I stretched it over 2 years. These are our own ~~assumptions~~ ^{assumptions} This is within our own mind, and particularly with my mind that I thought these things out. I knew the markets I knew I could put ^{it to} use if I had to.

Mr. Shibley: Mr. Moog, you told Mr. Candy that you intended, or hoped to, borrow one year apart from different groups \$20 million in Swiss francs. ~~And~~

Mr. Moog: Yes.

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5:20-5:25 pm

C.B.

Mr. Shibley: And you told them that on or about July 19, 1972.

Mr. Moog: That I could ^{borrow,} ~~be~~. Is that what you' are saying? That I could borrow.

Mr. Shibley: That you anticipated doing that.

Mr. Moog: Anticipated and could borrow, yes.

Mr. Shibley: Now did you have -and that the borrowings would be from two different groups.

Mr. Moog: No, sir, they would probably be from one ~~a~~ insitution, that would stretch it over two years.

Mr. Shibley: I see.

Mr. Moog: That would be my thinking. AGain it is all hypothetical. I never got further into it.

Mr. Shibley: I see. Now then did you have any further correspondence with any bank in Switzerland pending July 19, 1972, referable to funding the head office building of Hydro.

Mr. Moog: NO sir.

Mr. Shibley: Did you make trips to Switzerland?

Mr. Moog: NO sir.

Mr. Shibley: Did you call Switzerland?

Mr. Moog: I call Switzerland quite frequently I have friends there.

Mr. Shibley: Referable to the head office.

Mr. Moog: NO.

Mr. Shibley: Well then what gave you the expectation or anticipation that all of the financing would be obtained from Switzerland, as of July 19. Bearing in mind, Mr. Moog, this is an important day for Hydro, it is the day on which Mr. Candy is reporting to the meeting at which it was decided to enter into a contract with you.

Mr. Moog: I wish I could explain this to you Mr. Shibley how we function or I function. I had the ~~the~~ ~~confidence-of-raising-the-~~

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M.R.

(Mr. Moog)

...the confidence of raising the funds I was in contact very actively with a North American market. I knew about the Swiss market and I then also had the idea that I could stretch it over two years and then get \$40 million and I if I wouldn't get American funds then I could certainly get Swiss funds at a higher cost and then I would of course have to carry the big obligation of the 15-year problem which I think is inherent in all the Swiss financing I know of of any magnitude, that I would have to establish a sinking fund. These were all problems which were bothered me but if I had to swallow them or assume them, I would. I would say this right now, it is disadvantageous to do this in comparison to financing in North America.

Mr. Shibley: Now, isn't it a fact that the Swiss were the people who told you they would not go fifty/fifty with a U.S. financial institution?

Mr. Moog: No, sir.

Mr. Shibley: That is not so?

Mr. Moog: I don't recall that.

Mr. Shibley: Did you ever tell Mr. Candy that?

Mr. Moog: I don't think I have.

Mr. Shibley: And that they were the parties that were insisting that the whole of the funding be from Switzerland?

Mr. Moog: No, sir. No, sir. No such reference.

Mr. Shibley: Up to that point of time, in any event, you had intended that half the financing be with Swiss money and half ~~with~~ Equitable?

Mr. Moog: That was one plan we had.

Mr. Shibley: Yes. Now, Mr. Moog, I want to take you to the only document in that file, every other document having been reviewed with you as it relates to Hydro's head office building, the only remaining document is a

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(Mr. Shibley)

document dated May 15, 1972 and again, it's from the same Swiss bank ...

Mr. Moog: I'm sorry. This is the Montreal office.

Mr. Finlayson: It's not the same.

Mr. Shibley: I haven't looked myself.

Mr. Moog: I'm sorry, it is a Canadian office.

Mr. Finlayson: Mr. Chairman, ...

Mr. Shibley: Well, wait a minute, just let me have a look at it, if you don't mind.

Mr. Finlayson: Well, you ^{didn't} ~~didn't~~ mind asking the question while you were looking at it, I don't know why you shouldn't ...

Mr. Shibley: Well, I presume the whole file related to the same ~~bank~~ bank. Is this a different bank?

Mr. Finlayson: Of course it's a different bank. Don't you read the letters? You finally got them.

Mr. Chairman: Just a moment. Just a moment.

Mr. Moog: If I may clear this up ...

Mr. Shibley: Well, I'm sorry because what my problem is is some of the letters are on the personal letterhead of individuals of the bank and this one happens to be on the letterhead of the bank itself.

Mr. Moog: Yes, but you will find that that is a Canadian ~~bank~~ letterhead.

Mr. Shibley: Oh, all right. But is it ~~as~~ well, is that what the foofaraw is about?

Mr. Moog: Well, that's wh~~at~~ I tried to cut it off, Mr. Shibley.

Mr. Shibley: Thank you.

Mr. Bullbrook: You're not doing a very good job, Mr. Moog.

Mr. Shibley: Well, Mr. Finlayson you put me in - you did - this is ...

Mr. Bullbrook: I think I'd better clarify that.

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M.R.

(Mr. Bullbrook)

I meant ~~THE EXCHANGE~~ ^{BETWEEN COUNSEL} The giving of his evidence has been superb.

Mr. Shibley: This letter is from a subsidiary company of the . . .

Mr. Moog: Could I explain the circumstances?

Mr. Shibley: Yes, thank you, I would like you to . . .

Mr. Moog: I participated in a symposium dealing with inflation at the University of Toronto and I had the pleasure of meeting some very fine people like ^{Pick} ~~Mr. Moog~~ of the World Bank, like this gentleman who wrote this letter, like people from the Rockefeller Foundation and so on and we had quite an interesting discussion on inflation, a subject I am very, very much interested in. I particularly talked to this gentleman who was one of the speakers on that symposium. I - sorry?

Mr. Deans: ^{WERE} ~~Will~~ you ^{GETTING} ~~get~~ to the point where

you . . .

Mr. Shibley: I just want to know first of all...

Deans: ^{HE WAS} ~~Mr. Moog~~ ^{was} getting to that point. Go ahead,

sir.

Mr. Moog: I'm trying to explain that this is not related to this bank.

Mr. Finlayson: It has nothing to do with this bank.

Mr. Moog: I'm ~~trying to explain that this is not related to this bank.~~

Mr. Deans: It's for your own protection, not for mine.

Mr. Moog: I'm sorry but I have to explain because it really has nothing to do other than that this gentleman happens to also be from Europe and be from that Swiss bank. But he was a guest speaker here, I didn't know him before. I met him here and he invited me to the hotel.

Mr. Shibley: All right. That's why I couldn't understand your counsel's interjection.

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M.R.


Mr. Moog: Well, that's why I wanted to help you, Mr. Shibley.

Mr. Shibley: Thank you.. Maybe you and I can get along. Now, it being a letter from a person

Mr. ~~Sam~~ Chairman: I would hope so.

Mr. Shibley: ...within that same bank it's ...

Mr. Moog: This letter was simply written by this gentleman when he was in the Canadian ...



H-1447 to follow

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AA

(Mr. Moog)

Mr. Moog: Well, this letter was simply written by this gentleman when he was in the Canadian office as a thank you note, and I extended my greetings to the other two gentlemen and also told them that I was very sorry that we couldn't follow through with their bank any further.

Mr. Shibley: Well, that's why I want to read it because it was said to be - Mr. Finlayson, the other day, said the file contained irrelevant material and this is the only document I could think of wherein he might have said -that might have been referencing to relevant material.

Mr. Moog: We agree that this is irrelevant.

Mr. Shibley: Pardon?

Mr. Moog: We agree that this is irrelevant.

Mr. Shibley: No, I don't agree.

Mr. Moog: I see.

Mr. Shibley: Not yet.

Mr. Moog: OK.

Mr. Shibley: But it is the only document . . .
look,

Mr. Finlayson: Mr. Shibley, ~~we~~ explained this to you. - We would be glad to go on and explain to you again in camera. But this is the kind of stuff . . .

Mr. Shibley: No no.

Mr. Finlayson: . . . you are getting into which - I don't know how many times we have to tell you something but this letter was explained to you in the offices of Canada Square.

Mr. Shibley: I would like to . . .

Mr. Chairman: Mr. Shibley, proceed, if you will.

Mr. Finlayson: Well, now, that's not good enough for. I am very sorry that-I don't know any reason why this witness should be asked questions with respect to matters that are entirely irrelevant. I make the offer that if Mr. Shibley

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AA

(Mr. Finlayson)

would like to talk to me and to the witness outside ~~of~~ the room, then he will realize it isn't. But this is just - this is a ^{so}~~an~~ anxious way of proceeding.

Mr. Chairman: Well, now, is there any harm going to be done to Mr. Moog by this question. It may be irrelevant and .

Mr. Finlayson: I don't see any reason why this man has got to discuss all his business friends in front of this committee.

Mr. Chairman: Well, now . . .

Mr. Finlayson: There is all this business, "Oh, we have got nothing to hide, why don't you show it and if we don't like it, we will forget about it." This is the kind of nonsense that just brings the whole committee into disrespect.

Mr. Chairman: Well, I don't know whether the committee is in disrespect or not.

Mr. Bullbrook: I didn't ~~know~~ ^{realize} we had any respect as far as you were concerned, Mr. Finlayson.

Mr. Moog: Have you read the Globe and Mail this morning?

Mr. Chairman: But in any event, this is a letter in here. It evidently has some connection with this same bank that you are talking about. Again, we are not asking any names be released and I think it can be cleared up, probably fairly quickly, if you let the . . .

Mr. Shibley: Mr. Chairman.

Mr. Chairman: Mr. Shibley, proceed.

Mr. Shibley: Mr. Chairman, the relevancy of my question will become apparent very quickly, if I could only be permitted to continue for a few more questions.

In this letter, Mr. Moog, from the Swiss banker, from the same bank, ~~just~~ "Just a line to thank you for having

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AA

(Mr. Shibley)

taken the trouble to come downtown to my hotel to meet me. As I told you, I will do some travelling before I return to Zurich, but about the middle of June, I intend to be back in Zurich, and I will then certainly give your message to . ." so and so .."and my colleague" . . /so and so . ./these being the self-same two Swiss bankers that you had met on August 13th, 1971.

Mr. Moog: Yes sir.

Mr. Shibley: "Looking forward to meeting you at some later occasion."

Now, that is the content of that letter.

Mr. Moog: Right.

Mr. Shibley: Now, you will notice that he talks about you going down to his hotel to meet him.

Mr. Finlayson: Oh, yes.

Mr. Moog: I did, Mr. Shibley.

Mr. Shibley: Mr. Chairman, I'd ask for a little . . .

Mr. Chairman: Mr. Finlayson, now, from what has just been read, it would seem to me that that is very relevant. Now, we don't know what those messages were, but certainly don't suggest to us that we are not entitled to find out or ask some questions on it.

Mr. Finlayson: You have

Mr. Moog: I think I have answered you already, Mr. Shibley.

Mr. Shibley: Well, Mr. Moog, what interests me is that between March 30th, 1972, ~~and~~ exhibit 65, when it said ^A \$20 million portion was secure, and July 19th, 1972, when you reported to Candy your anticipation that the whole of the funding would be Swiss, you had a meeting in Toronto on May . . .

Mr. Moog: Yes, Mr. Shibley, I met this gentleman.

Mr. Shibley: . . .Just a minute, let me finish because Mr. Finlayson has to understand the relevancy of my

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m

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(Mr. Shibley)

asking you ~~the~~ questions about this document. You had a meeting with a representative of the self-same Swiss ~~the~~ bank in that interval and I want to know whether you ~~the~~ discussed with him the financing of the Hydro head office building at that time and whether it wasn't part of that discussion that they wanted to provide the whole of the funding and not go halves with a ~~the~~ U.S. corporation.

Mr. Moog: No sir, Mr. Shibley. That was not. And that was quite a side issue. This was a very interesting gentleman. I met him with his wife and I expressed my ~~sorrow~~ ~~that we couldn't have gone any further with his bank, which I~~ ~~respected highly.~~

Mr. Shibley: Gone

H 1448 - 1 follows

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V.H.

(Mr. Moog)

and I expressed myself that we couldn't have gone any further with this bank, which I respected highly ...

Mr. Shibley: Gone any further with this bank, in what regards?

Mr. Moog: Well

Mr. Shibley: In what regard?

Mr. Moog: In regard to the Hydro financing.

Mr. Shibley: So you did discuss with him the Hydro financing at that ~~him~~ meeting?

Mr. Moog: I mentioned it in that connection, Mr. Shibley.

Mr. Shibley: You did discuss it with him?

Mr. Moog: I mentioned it in that connection, yes.

Mr. Shibley: Yes. Now having got you to the point of discussing the Hydro head office funding with him in May -- when was this meeting in Toronto in May?

Mr. Moog: It was preceding -- this was after the meeting when he was leaving from here to go to other cities.

Mr. Shibley: Can you be more ~~more~~ precise? Can you be more precise as to a date?

Mr. Moog: Of the symposium? On inflation?

Mr. Shibley: He talks about your going down to meet him at his hotel?

Mr. Moog: That was just a couple of days prior to him writing the letter to thank me that I visited him. I think it is just European courtesy that he wrote me that note.

Mr. Shibley: I am sure that was his reason but what we are interested in, Mr. Moog, is what was the content of your discussion with him in May 1972 as it affected your getting Swiss financing for Hydro's head office building?

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V.H.

Mr. Moog: I simply -- I told him that I knew these gentlemen from his bank and that was only a small portion of our discussion. I want to make that quite clear that we did discuss other topics which were much more interesting. I did mention to him that I knew these gentlemen and would he please give them my greetings, and I expressed my sorrow that we could not have gotten any further in the anticipated dealings on the Hydro project. *Yes, I did say that.*

Mr. Shibley: I want to take you back to exhibit 85, July 19, wherein Mr. Candy is reporting to his people:

"Canada Square now advises" - now advises - "that they anticipate all of their long-term financing will be obtained from Switzerland."

Did you have follow-up conversations during the period of ~~and~~

Mr. Moog: No sir.

Mr. Shibley: ~~and~~ of March 30 when he was reporting only the Swiss portion secured for \$20 million to July 19 when he is reporting that the whole of it you anticipated would be received from Switzerland.

Mr. Moog: With whom? *With Mr. Candy?*

Mr. Shibley: Mr. Candy.

Mr. Moog: I did say at one time to Mr. ~~Genest~~ Candy that there is a possibility to get all the financing from Switzerland, and that's what we had to do.

Mr. Shibley: And in the same conversation, you were telling him were you not -- Mr. Genest, so as to shorten this matter, what is Mr. Candy's evidence to be as to what ~~a~~ information was imparted to him by Mr. Moog respecting the full funding of this project by Swiss funds?

Mr. Finlayson: Well you are not going to ask Mr. Genest what Mr. Candy says and then ask Mr. Moog ~~and~~

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V.H.

Mr. Shibley: Unless you want the witnesses to come back and forth. I am ~~going~~ going on information provided by counsel in this respect.

Mr. Chairman: Mr. Genest, are you prepared to give us a statement on that?

Mr. Genest: I have a note somewhere, Mr. Chairman, but I can't find it. I am sorry, Mr. Shibley, perhaps you had better get me oriented. What are we talking about? ~~OK~~

Mr. Shibley: We are talking about the fact that whether it was the Swiss that wanted no partnership with an American financial institution and ~~and~~

Mr. Genest: I am informed by Mr. Candy, I've got that one, I think I remember what ~~was~~ ^I said and Mr. Candy can correct me ^{if} ~~if~~ I don't have the note. But ~~shortly~~ ^{shortly} around July 19 ~~and~~

Mr. Shibley: Yes?

Mr. Genest: ~~and~~ Mr. Candy was informed by Mr. Moog that they anticipated obtaining their financing in Swiss -- entirely from Switzerland in two instalments.

Mr. Shibley: Yes.

Mr. Genest: And that he was also informed - now was that at the same time? ^{it is} Mr. Candy's recollection is ~~and~~ ^{that} also informed that the Swiss were ^{we} keen on the idea of sharing the loan with an American institution. Is that right?

Mr. Walker ^{and} Were keen or not keen?

Mr. Shibley: Were not keen.

Mr. Genest: Were not keen.

Mr. Candy: ^{No} ~~I think~~ the situation ^{ation} was ^{we} looked at this building ~~and~~

Mr. Chairman: ~~While we back, Mr. Candy.~~

Mr. Candy: ~~I think what the situation here was~~

Mr. Chairman: Welcome back, Mr. Candy.

Mr. Candy: I think what the situation here was, we looked at this building, it's a symmetrical design; in other words, each half of that building is self-sufficient. And the situation there was that if part of it was Swiss capital, and part of it was American capital, the Americans would have half the building and the Swiss would have the other half.

Mr. Moog: Thanks very much, Ken, I remember now.

Mr. Candy: And that building is such that you can divide it right down the middle. And this was what we discussed at that time.

Mr. Shibley: What I want to know is ~~what~~ whether Mr. Moog said to Mr. Candy that it was the Swiss who were insisting that the whole of the financing be Swiss; they wanted no partnership with a U.S. corporation. Did he tell you that?

Mr. Candy: That they wanted no partnership with a U.S. corporation - the only reference we had to no partnership with a U.S. corporation ^{is} ~~was~~ that they could define which portion of the building their money was invested in. And that sounds kind of

Mr. Shibley: That's not the question I asked of you. I had understood from your counsel that Mr. Moog had said to you that it was to be all Swiss financing because the Swiss did not want to go halfers.

Mr. Moog: I don't think I have said that Mr. ~~Shibley~~ Shibley.

Mr. Shibley: Well, that's what I'm trying to establish one way or another. We've got you both here, let's get it cleared up.

Mr. Candy: Yes, I think to be fair here, Mr. Shibley, ~~it~~ there are two different things here; he did say at that time that it would be all Swiss capital. That was one situation. ~~The~~ The other situation I don't think is at that particular time but the other situation is, as I have stated, and I ^{remember} ~~REMEMBER~~ looking at the building the fact that it is a symmetrical building,

Mr. Shibley: Oh, I see.

Mr. Candy: And that if they were going to put half the money into that building, and the Americans put the other half, it would have to be defined which half of the building the Swiss owned

(Mr. Candy)

and which half the Americans owned

Mr. Shibley: I understand it now.

Mr. Candy: But that was the situation.

Mr. Shibley: Okay, thank you. Thanks Mr. Candy.

It appears, Mr. Moog, from that exchange that there must have been some discussions between you and Swiss bankers referable to the division of the funding of this building, and I want to know what, and when, and with whom?

Mr. Finlayson: There was nothing in that exchange that would make any reasonable person arrive at that conclusion.

Mr. Moog: I would like to explain to Mr. Shibley, and perhaps I can do this, George.

Mr. Finlayson: All right.

Mr. Moog: I'm sorry. We wrote up propositions, Mr. Shibley, on financing ourselves, and I would think them ~~me~~ out first of all mentally, a lot of that information I would have in my head; I would try to digest it and if it makes any sense I would put it in a letter form and propose it to a bank or an insurance company or what have you. And those were all hypothetical situations which I had in my own head and I suppose that's where they were. I said to Mr. Candy at the ^{time} ~~time~~ when he asked me "what do you think you are going to do about financing?" I would always say: "Don't worry about it, we'll get it." I did have nothing else.

MR. Shibley: Mr. Moog, just to ~~clear~~ clear up one other thing; we have now completed a review of all documents in ~~the~~ that file.

Mr. Moog: That is right.

Mr. Shibley: There aren't any others?

Mr. MOOG: No Sir.

Mr. Shibley: And every one of them related to the Hydro head office funding. Isn't that so?

Mr. Moog: Right Sir.

Mr. Chairman: Mr. Moog, "secure" in your mind might not have the same meaning as "secure" in Mr. Candy's mind. Is that not so?

July 25, 1973
5:40 - 5:45 pm
JLP

Mr. Moog: I tried to say that, Mr. Chairman, and thank you for assisting me there, yes.

Mr. Chairman: But did you know at the time that there might be a difference in what he had in mind as "SECURE" and what you were saying as "secure"?

Mr. Moog: I think Mr. Candy relied rather heavily that I would produce whatever I would undertake. And I certainly assured him of that at all times.

Mr. Bullbrook: So, in effect, if I may, notwithstanding that you had no commitment, in essence you were making a commitment to Hydro.

Mr. Moog: I suppose I would take it upon myself to make a commitment. That is very good, Mr. Bullbrook, yes. And I have made a commitment to them even after I closed the deal and I then didn't have any financing. Thank you.

~~MRxxChairmanxxMRxxRenwick.~~

Mr. Bullbrook: I don't know whether it's beneficial or not.

Mr. Moog: I think very. I want to get this cleared up in front of this committee that there isn't any mystery as that bothered met.

~~Mr. Renwick: Mr. Chairman, I would like to, at the risk of going over that ground very briefly again~~

(Tape H-1451 follows)

July 25, 1973
5.45-5-50 p. m.
M.F.

H - 1450 - 1

Mr. Renwick: Mr. Chairman, I would like to, at the risk of going over that ground very briefly again, I want to point out to Mr. Moog, so that he carefully understands, that his evidence on this matter is, in my judgment, very important. ~~and~~ I want you to understand the circumstances under which Mr. Candy, who is a responsible officer of Hydro, is dealing with the Commission, which is the governing body of Hydro and has the ultimate responsibility for the decisions which are made, ~~and~~ Mr. Candy, on July 19th, having attended the Commission meeting, at which the decision was made to proceed with your company, goes on record for the file of his recollection of exactly what he told the Commission, ~~and~~ It is in that context and not in the context of some degree of counsel by-play or levity, that I want this matter dealt with very clearly.

Mr. Candy stated in the memorandum to file - and I am not going to read the whole of it - you have before you, I understand, exhibit 85:-

"I advised the Commission that Canada Square will obtain their interim financing up to an amount of \$40 million from the Bank of Montreal and that Canada Square now advises that they anticipate all of their long-term financing will be obtained from Switzerland".


That is the meeting at which he attended with Mr. McCallum and at which the Commission made the decision to go with your company. Now, in the light of the importance of that meeting, in the light of Mr. Candy's responsibility to the Commission which governs Hydro, was there, between the dates which Mr. Shibley indicated to you, which were March 30th and July 19th, any discussions by you with your Swiss financial sources, either the bank which you and the Premier attended, on August 13th of 1971, or your other sources, which would have led you to restate to Mr. Candy that "Canada Square now advises that they anticipate all of their long-term financing will be obtained from Switzerland?"

H - 1450 - 2

Mr. Moog: No, sir, Mr. Renwick.

Mr. Renwick: Right. Now the significance ~~xxxx~~ to me of the question which I raised is that in your proposal ~~|~~ and I am not speaking of the ultimate outcome of the negotiations ~~|~~ in your proposal you stated that the rate would be \$4.92 if the tentative arrangements which you made for Swiss financing went through for the \$20 ^(million) and if they didn't go through, that the rate per square foot would be, I think, it was \$5.25, ~~and~~ bearing in mind that it was on the basis of your proposal and the basis of the memorandum which Mr. Candy was, in a major sense, responsible for submitting to the Commission, that all of the comparisons between all of the developers, so far as Hydro were concerned, were based on the proposition that the ~~rate~~ rate would be \$4.92, because the alternative set out in your proposal was not applicable but that it was all going to come from Switzerland and that the rate was going to be a more favourable rate?

Now, my concern is that that ~~|~~ and again I am not making judgment, I am trying to get just the evidence on the record about it, ~~and~~ I don't want anybody to impute any conclusion from my remarks at all; I just want to get it on the record.



Tape H - 1451 follows

July 25/73

5:50-5:55 pm

C.B.

Mr. Renwick)

~~just the evidence on the record about it, and I don't want~~
~~anybody to impute any conclusion from my remarks at all. I~~
~~just want to get it on the record as to — so you will appreciate~~
the Commission's position on the recommendation made by their
main advisers on this matter, that the \$4.92 in Mr. Candy's
judgement was related solely as a firm rate to the obtaining
of the financing in Switzerland. Now, I come back, having
stated that background and the importance of it, I want to
again ask you the question: Was there at the meeting when
you went to visit your colleague on the symposium, when you
went after that meeting to the hotel to meet with him, a
discussion with him of other than condolences or expressions
of concern that it hadn't gone through with that bank?

Or were there messages transmitted to the bank
in Switzerland ~~any~~.

Mr. Moog: No, Mr. Renwick, there was nothing. This
was a dead issue.

Mr. Renwick: And it was within that context
that those discussions took place? Not discussions, but that
~~xxxxxxxxxx~~ conversation took place at the hotel in Toronto?

Mr. Moog: That's right.

Mr. Renwick: Thank you, Mr. Chairman.

Mr. ~~Chairman~~ Chairman: Any other questions at
this time?

Mr. W. Hodgson: Mr. Chairman, I ~~am not too sure~~ ^{don't want to be premature}
but I'm ~~rather~~ ^{thoroughly} confused. What I would like to know ^{is} what is the
final figure of the rental that you are ~~in~~ in your proposal and
you get the building built for Hydro, is it \$4.92 or is it \$5.25?

Mr. Moog: \$4.92 sir.

Mr. W. Hodgson: Thank you. Regardless of where you
get the money?

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5:50-5:55pm
C.B.

Mr. Moog: Absolutely so.

Mr. Renwick: Oh, Mr. Chairman, I understand that ~~that~~ and I'm gladd Mr. Hodgson put that on the record ~~that~~ I think that is a separate point in this particular matter which is of concern to me.

Mr. Chairman: Mr. Glen Hodgson.

Mr. R.G. Hodgson: I understood that was a firm rate and it was so considered by the Hydro Commission on the 19th.

Mr. Shibley: Ultimately it was, yes.

Mr. R.G. Hodgson: But there also is the ~~the~~

Mr. Shibley: In the proposal there was a range suggested according to the cost of financing, but, ultimately, in the contracts that were entered into it's firm, \$4.92. Actually, it is \$4.84 with adjustment because of a set-off of rental on commercial space.

Mr. R.G. Hodgson: Yes, but also exhibit 86 is where ~~where~~ Mr. Sisson points out the risk would be carried by Hydro with a further notation to clear up that point.

Mr. Finlayson: ~~Mr. Sisson~~ I just spoke to Mr. Shibley ~~that~~ rather or Mr. Genest ~~that~~

~~Genest~~ ~~Mr. Chairman~~: Mr Genest!

Mr. Shibley: I just took on a lot of weight!

Mr. Finlayson: We are all getting tired! ~~but~~ I think you must all realize the \$4.92 is the maximum amount that Hydro had ~~to~~ to pay. But they could pay less under certain circumstances.

Mr. Renwick: Mr. Chairman, that's another topic. My point was that the proposal made by Camia Square, which was the basis of the comparison with the other proposals and on the basis on which the full report, ~~even~~ even though it was in draft form of April 15th or 10th - April 10th was prepared, and then the basis on which the commission made it's selection was on proposals which related to Swiss financing, firm at \$4.92

July 5/73

5:50-5:55pm

C.B.

(Mr. Renwick)

and that was the figure that was used for all comparison purposes when the Canada Square proposal was not, at that point in time, firm at \$4.92.

Mr. Finlayson: Yes, it was.

Mr. Genest: Yes, it was. The Commission always understood that that \$4.92 was a firm rate.

Mr. Renwick: Regardless of the source of financing?

Mr. Genest: ^{Certainly} ~~Yes~~ in July of 1972 the understanding of the Commission was that regardless of the source of financing ~~the rate would not rise above \$4.92.~~ (for them,)

Mr. Renwick: Mr. Chairman, perhaps Mr. Genest would help us overnight or before tomorrow, if he could, to clarify that understanding.

Mr. Genest: I don't think I need overnight, Mr.

~~Renwick~~
~~Chairman~~

Mr. Renwick: Is there anything that would indicate ~~any~~

Mr. Genest: I don't think there is any doubt about it. As far as the Commission was concerned, they understood Mr. Moog as proposing a firm, maximum \$4.92 rate.


Mr. Renwick: Well, the only ~~long~~

Mr. Genest: As of July 1972.

Mr. Shibley: Mr. Chairman ~~long~~

~~Mr. Finlayson: I can confirm what Mr. Genest said. That was our position too. As I have said the source of the funding was irrelevant...~~

H1452 to follow



H-1452-1

~~(Mr. Genest)~~

~~A firm, maximum, \$1.92 rate as of July, 1972.~~

~~Mr. Renwick: Well, Mr. Chairman.~~

Mr. Finlayson: I can confirm what Mr. Genest has said. That was our position too, that, as I have said, the source of the funding was irrelevant, that Canada Square was the one at risk at all times.

Mr. Shibley: ~~Mr.~~ On that comment, it was firm at \$4.92 as at July 1972?

Mr. Genest: That is correct.

Mr. Shibley: That's fine.

Mr. Renwick: I'd like, if Mr. Genest would, to check the memorandum which the commission dealt with and the April 10 one and anything else which would indicate how the commission knew that it was firm at that time, ^Bbecause we don't have any evidence here that it was firm at that time.

Mr. Genest: You want to know how we arrived at that understanding? Is that correct, Mr. Renwick?

Mr. Renwick: Yes, when the commission was having its deliberation with respect to the selection.

Mr. Genest: I'll inform you of that tomorrow.

Mr. Renwick: Thank you.

Mr. Chairman: Mr. Bullbrook.

Mr. Bullbrook: I just wanted to ask Mr. Moog something that I consider myself valuable. Based on the last questions that I asked you; in your previous development dealings ~~whether~~ have you ever made a commitment previously?

Mr. Moog: I think we have often started buildings without financing, sometimes without tenancy, and take the risk and made a commitment to whoever it may be, TTC or City of Windsor, and just make the commitment and go, and carry the risk until we can find our financing. Yes, Mr. Bullbrook, we certainly have done that.

Mr. Bullbrook: And at that time you commit the rate?

Mr. Moog: Yes.

Mr. Bullbrook: The rate of rental?

H-1452-2

Mr. Moog: Yes, that is what I was trying to get to for quite some time to just highlight the risks involved when you take on a proposition like this.

Mr. Bullbrook: And I take it then it would be fair to assume that the quality of your risk in such an undertaking would be directly referable to the attractiveness of the covenant of your tenant?

Mr. Moog: I would rather say that that forms a portion of it. I think our ability to perform is probably every bit as important. As a matter of fact I was going to give a dissertation on that subject.

Mr. Bullbrook: Well we won't now, but I'm...

Mr. Moog: A covenant is only one thing whether we are dealing with General Foods or Trans America Corporation, or Holiday Inns. They are all good companies.

Mr. Bullbrook: Yes.

Mr. Moog: But you are still at risk. I to this time have not taken out permanent financing on a Holiday Inn I built many years ago.

Mr. Bullbrook: I see.

Mr. Moog: It is quite normal, Jim. I'm sorry, Mr. Bullbrook, sir

Mr. Bullbrook: It's all right Mr. Moog.

Mr. Chairman: Mr. Allan.

Mr. Allan: Mr. Chairman, I was just going to ask you if it was fair to assume that the optimism I expressed before lunch was justified.

Mr. Chairman: Yes I think it was, Mr. Allan.

We are adjourned until 10:00 a.m. tomorrow morning.

~~Tex~~

The committee adjourned at 6:00 o'clock, p.m.

APPEARANCES

Committee members:

J.N. Allan

J.E. Bullbrook

I. Deans

M. Gaunt

L.C. Henderson

R.G. Hodgson

W. Hodgson

J.P. MacBeth (Chairman)

W. Newman

J.A. Renwick

G.W. Walker

Clerk of the committee:

Paul Moore

Committee counsel:

R.E. Shibley, QC

Assistant to committee counsel:

J.P. Bell

Ontario Hydro counsel:

Pierre Genest, QC

James McCallum, QC

Canada Square counsel:

Douglas Laidlaw, QC

Blair Cowper-Smith

G.D. Finlayson, QC

President, Canada Square
Corp. Ltd.

Gerhard W. Moog

List of exhibits introduced during this sitting
appears on the next page.

INDEX TO EXHIBITS

bit	Page	Description
	1416 - 1	Hydro memo, August 25th, 1971, J. O. Dean to L. F. Farmer, re administration building.
	1416 - 1	Hydro memo, August 25th, 1971, J. O. Dean to W. E. Raney, re administration building.
	1416 - 2	Hydro memo, August 27, 1971, J.O. Dean to J. B. Gush, re financing.

LEGISLATURE OF ONTARIO

SELECT COMMITTEE

HYDRO HEADQUARTERS

Thursday, July 26, 1973.

Morning session

July 26/73
10.10-10.15 a.m.
E.M.

LEGISLATURE OF ONTARIO

SELECT COMMITTEE - HYDRO HEADQUARTERS

The committee met at 10:00 o'clock, a.m. in the members' board room.

Mr. Chairman: Ladies and gentlemen, I call the meeting to order, and note that Mr. Moog is already in his chair, so, Mr. Shibley, I think we are ready to proceed.

Mr. Shibley: Mr. Moog and members of the committee, because it was late, I'm sure that we were all tired last evening. I want to just refresh everyone's memory as to the import of your evidence yesterday, Mr. Moog. ~~and~~ If I don't completely or accurately state it, please fill in where you think further information is required.

Mr. Moog: During or afterwards?

Mr. Shibley: During the course of it. Don't feel hesitant to interrupt me.

On March 30th, 1972, Mr. Candy was reporting to Hydro that \$20 million Swiss financing was secure. This was following an instruction to ~~you~~ ^{him} from Mr. Mink that he take up the matter with you, and having had a discussion with you on March 30th, that was the content of his report on his discussions with you.

On July 18, 1972, Mr. Candy was reporting to Hydro, on the day it was deciding to let the contract, that you anticipated that the whole of the financing would be Swiss. And you said yesterday that as from November 18, which was the date of the one letter in that file from the Swiss bank, that you had - and until January 24, the date of your submission, you had had dealings with no other Swiss bank other than the bank that you had visited with the ^{Premier} ~~Premier~~ in August, '71.

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H-1453-2

(Mr. Shibley)

NB
I want to know, did you have dealings with any other Swiss bank pending July 18, 1972?

Mr. Moog: No, sir.

Mr. Shibley: So that any reference to a Swiss bank up until July 18, 1972, would not have to do with communications made between you and any bank other than the Swiss bank visited with the Premier in August '71? Is that correct?

Mr. Moog: If I made specific reference to a Swiss bank, which I don't think I ever did.

Mr. Shibley: But in any event you had no communications with any other bank pending July 18 in Switzerland? Any other Swiss bank?

Mr. Moog: No, sir, not a bank.

Mr. Shibley: All right.

Mr. Moog: No, sir, not a bank; I want to differentiate, not a bank.

Mr. Shibley: All right. Now, then - and you have indicated that the only communication you had with anyone in the same Swiss bank

Mr. Henderson: Mr. Shibley, did you note the witness said "not a bank"? Was there another financial institution?

Mr. Shibley: Thank you. Did you deal with anyone in Switzerland pending July 18?

Mr. Moog: I had discussions with friends of mine in Switzerland.

Mr. Shibley: Referable to the head office financing?

Mr. Moog: ~~Yes~~ about financing in Switzerland, about the financial climate in Switzerland.

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Mr. Shibley: Yes, but I am talking ^{only} about Hydro head office financing.

Mr. Moog: I never did anything specific about Hydro, ~~ever~~ ever.

Mr. Shibley: All right. Pending July 18, 1972 - July 19.

Now, then, again going back, the difficulty that confronted you, you told us, with respect to the funding offered by the Swiss bank in Zurich had to do with the amortization of that funding. Is that correct?

Mr. Moog: That was a major difficulty.

Mr. Shibley: That was the major difficulty?

Mr. Moog: Mr. Shibley, I have to state again, as I ^{hope I} ~~stated~~ expressed yesterday, that this was hypothetical thinking, that my trip over there was informative to me as well as it was informative in other areas to the Premier. I want to make that quite clear that that is the case.

Mr. Shibley: Fine; I understand what you ^{Rare} said.

Now, I want produced to you a document which was within the files that were produced to me on May the 24th ¹⁻¹ incidentally, May 24th was the ~~date~~ day on which you, through your solicitors, produced to me such files as were supposed to be relevant to this inquiry. Is that correct?

Mr. Moog: If that is when they were produced to you, I would presume so.

Mr. Shibley: Yes. And you did not produce the file that was in issue until I interviewed you on July 16th. Is that correct?

~~Mr. Moog: I, and I don't think my solicitors~~

(Tape H-1454 follows)

(Mr. Shibley,

~~was the file that was on issue until I interviewed you on~~
~~July 16, is that correct?~~

Mr. Moog: I, and I don't think my solicitors, consider it relevant.

Mr. Shibley: I understand that that was your reasoning for not doing so, but I just wanted a matter of record, Mr. Moog, that whereas I had asked and received for files on May 24, the file in question was not delivered up to me until I was interviewing you on July 16, is that correct?

Mr. Moog: I'm sorry, I was just reading this document.

Mr. Shibley: I say that although I asked for and received files from your office through your solicitor on May 24, the file in issue was not ~~delivered up~~ shown to me, nor referenced in any way to me until I interviewed you on July 16.

Mr. Moog: You have to deal with my solicitors on that. I certainly showed everything to my solicitors.

Mr. Shibley: I see. Now, getting back to the document in front of you. And I think all members of the committee now have a copy. You will note the date of it, Mr. Moog, is June 21, 1972.

Mr. Moog: That's right.

Mr. Shibley: And I want to read it through with you. "Art Keegan confirmed that Equitable has just loaned monies at 8% on a building occupied by the Aluminium Company of America." Incidentally, this is a memo of your own, isn't it?

Mr. Moog: It looks like that, yes.

Mr. Shibley: And it's a memo for your own file?

Mr. Moog: That's right.

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10:15 - 10:20 am.
M.S.

Mr. Shibley: This was not a communication from you to anyone outside your office?

Mr. Moog: No, sir. Just to remind myself of what the market looked like in the States at that particular time.

Mr. Shibley: It reflects a discussion you had with Art Keegan of ~~the~~ Equitable, does it not?

Mr. Moog: It reflects information. Yes, a discussion, yes. I guess that's correct, Mr. Shibley.

Mr. Shibley: All right. "He figures that a government proposal in Canada should certainly have the same rate if it were in the States. However, the feeling is that there should be a premium payable to compensate investing in Canada. My opinion is that the premium should be the other way around since our economy is sounder than the U.S. Art agrees and says that the same line of thinking sold my deal the last time."

Mr. Moog: I did a good job on that too, by the way.

Mr. Shibley: I gather he's talking about the OISE deal, is he?

Mr. Moog: That's right.

Mr. Shibley: Yes, all right. "He figures that Don Waugh would want 8-1/2 - 9% on the Hydro deal. I then suggested that we work out a put-through deal whereby we organize funds for Equitable in Switzerland, Equitable charges a minimum mark-up and loans us the money with us compensating for any exchange risk."

Now, Mr. Moog -

Mr. Moog: I said that.

Mr. Shibley: You said that?

Mr. Moog: Yes.

Mr. Shibley: And what this really amounts to is that you would arrange for monies to be loaned from Switzerland to the Equitable company, is that correct?

Mr. Moog: That was the thought I had at that time, obviously.

July 26/73
10:15 - 10:20 am
M.S.

Mr. Shibley: Just hold on a minute. And Equitable would in turn loan the money to Hydro, is that right?

Mr. Moog: To my company.

Mr. Shibley: All right, to your company for the Hydro building.

Mr. Moog: Right.

Mr. Shibley: And so the loan would appear to be a loan from Equitable to you, is that correct?

Mr. Moog: Quite so.

Mr. Shibley: Whereas the monies that were funding that loan ~~was emanating from~~ would emanate out of Switzerland to Equitable, is that right?

Mr. Moog: That's right.

Mr. Shibley: And that's what's meant by a "put-through deal"?

Mr. Moog: That's right.

Mr. Shibley: And ~~was~~ you were talking about a "put-through deal" for the Hydro head office on June 21, 1972, weren't you?

Mr. Moog: Yes, I ~~was~~ was trying that on for size and on Equitable Life, even before that.

Mr. Shibley: Equitable Life did the OISE building, didn't it?

Mr. Moog: That's right.

Mr. Shibley: Was that a "put-through deal"?

Mr. Moog: No, it was not.

Mr. Shibley: I see. But you were contemplating a "put-through deal" for the Hydro building, using Swiss monies as the real source of funds?

Mr. Moog: Just ~~at~~ at moment, Mr. Shibley. I'd just like to explain this again.

Mr. Shibley: Surely.

Mr. Moog: If you read the paragraph before that, I

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10:15 - 10:20 am.
M.S.

(Mr. Moog)

had some trouble with some of the people in head office, and Mr. Waugh is ~~the~~ vice president. I have dealt previously with people about Mr. Waugh. Mr. Waugh had advanced and Mr. Waugh was always against investing in Canada. And here again I had a situation where he wanted 8-1/2 to 9 per cent. I consider that very high. I wanted to get my money in the U.S., but I couldn't get it down to where I wanted it and where I now have it, hopefully. So I talked to Mr. Keegan, whom I work with very closely, and of course I work with superiors of Mr. Waugh very closely. ~~And I suggested to him, I said, "Look, I've already talked to other people in your organization and I have shown them already that~~

Tape H 1455 follows

July 26, 1973
10.20 - 10.25 a.m.
M.R.

(Mr. Moog)

And I suggested to him and I said, "Look, I've already talked to other people in your organization and I have shown them already that I've got some indication from Switzerland that I might be able to raise money. I have no commitment but I naturally used whatever I had in my hand, and would it not interest you if you are going to be sitting on your high horse asking eight and a half to nine per cent if I all of a sudden got you a loan for a change from Switzerland at six and a half per cent, so that you, in effect, can then loan me money at a lower rate than eight and a half to nine per cent." That is all I meant by that.

Mr. Shibley: Well the timing is of interest to us, Mr. Moog, because this also happens to be taking place during the period intervening between March 30, 1972, when Candy reports that you told him your Swiss financing was secure for \$20 million and July 18, when he's reporting to the commission that you anticipate full financing from Switzerland and I remind you that you have met with a Swiss banker from that same Swiss bank in Toronto in May, 1972.

Mr. Moog: I hope I've made my position clear what happened at that same Swiss bank yesterday.

Mr. Shibley: I know what you said yesterday, Mr. Moog. My function, however, is to test what you said against other documentary evidence that I'm now producing to you.

Mr. Moog: You're very welcome, sir.

Mr. Shibley: And I want to understand whether in fact, and remember your first question - your first answers to me this morning, that as at July 19 you had not been in communication with any other Swiss bank than that which you visited in August, 1971. Was the bank that you contemplated receiving the funds which would be through - put through Equitable funds that you expected to received from that same bank?

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Mr. Moog: No, they were not. They could have been from anybody in Switzerland.

Mr. Shibley: Could they have been from that bank?

Mr. Moog: No. Their terms didn't suit me.
~~There~~ Their terms wouldn't suit Equitable either.

Mr. Shibley: Well, now, let's talk about that for a minute, Mr. Moog. Would it not have been possible to overcome the amortization problem, which you said was a major difficulty, by having Swiss ^{at 11.25%} ~~money~~ loaned to Equitable on terms acceptable to the Swiss as to repayment and having the amortization of repayments on the relending of the money take place in the transaction, ^{SAY} ~~inter-~~ Equitable and your firm?

Mr. Moog: I never put it to them but maybe you should, Mr. Shibley. You are a very good negotiator. I have not done that.

Mr. Shibley: Mr. Moog ...

Mr. Moog: I just haven't done that. I'm sorry if I

Mr. Shibley: That's not a responsive answer.

Mr. Moog: All right, I have not done that.

Mr. Finlayson: Just a minute, Mr. Chairman, I put my faith in this committee when I handed over that file and I told the committee at the same time that I wasn't just objecting to questions that went towards Mr. Moog's dealings with this specific bank. I also said there were two other specific sources and I had shown ~~in~~ the files on those or the documents on those to Mr. Shibley; the one, of course, is the Equitable file, which Mr. Shibley is now referring to and I say, with great respect, that it's time ^{for} ~~Mr.~~ Shibley to explain to this committee just why it is relevant for him to be persisting in this line of argumentative questioning with the witness.

July 26, 1973
10.20 - 10.25 a.m.
M.R.

Mr. Moog: I could explain that.

Mr. ~~Shibley~~ Finlayson: Well, never mind, Mr. Moog, I would just as soon have an explanation from Mr. Shibley because ...

Mr. Shibley: Stop ~~bullying~~ ^{82 BULLYING} your witness, Mr. Finlayson.

Mr. Finlayson: He's the toughest guy here, I'll tell you that.

Mr. Chairman: All right, now, gentlemen, I ...

Mr. Finlayson: With great respect, Mr. Chairman, I don't know - these proceedings have been going on a long time - I'm very much of a new boy here and I just ask you gentlemen to have Mr. Shibley explain why it is so important that he ...

Mr. Shibley: I'll be glad to.

Mr. Finlayson: ... pursue this line of questioning.

Now he said yesterday that he wouldn't state that in my presence. I have no objection if he states it to the committee in camera but I really do think that we all - if I don't have any idea where he is going - at least, you gentlemen should. Because this can go on and on and on and I don't understand the relevancy of it.

Mr. Renwick: Mr. Chairman, would Mr. Shibley just continue?

Mr. Chairman: Well, I just want to deal with this, Mr. Renwick. I note your objection, Mr. Finlayson. This is one of the difficulties I suppose, in conducting public hearings of this nature where it is difficult for counsel to meet with the committee ~~because~~.

July 26/73
10.25 to 10.30 am
fvk

(Mr. Chairman)

~~.....I suppose, in conducting public hearings of this nature where it is difficult for counsel to meet with the committee~~
because we have decided that our meetings preferably should be in public. It's ~~■~~ one of the problems I, as chairman, have and one of the problems Mr. Shibley has as far as getting instructions from the committee unless they are given here in public.

I would like to remind everybody that no one, at the present time, is on trial. Nobody has committed^d any offence and I would like to see an easier tone on all parts, by all counsel. Mr. Shibley has indicated that he is quite prepared to indicate the relevancy of his present line of questioning and I'm going to ask him to do that. But I would hope that we could conduct ourselves in, perhaps, a little more relaxed atmosphere because, as I say, nobody has been charged. This is an inquiry and nobody is on trial. If you would, perhaps, Mr. Shibley give the committee some - You have further comments, Mr. Renwick?

~~Mr. Renwick: Yes, Mr. Chairman.~~

Mr. Renwick: No, time is of the essence, Mr. Chairman.

Let's get on with our work here.~~and~~

Mr. Shibley: Mr. Chairman, I would rather simply say, at this point of the examination, that there is documentary evidence within Hydro's documents that Candy, whose only source of information from Canada Square's Mr. Moog, said as of July 19 his information from Mr. Moog was that the whole of the funding would be Swiss. This witness is now being asked, whether in fact, the arrangements which he had in mind were those as reflected by the June 21, 1972 document that we are now reviewing¹ whereby^{in fact} the funding would be Swiss ~~■~~ but that it would be put through the Equitable Insurance Company and, in that manner, the amortization problems referable to the lending of money from that same Swiss bank would be overcome, because Equitable could loan the money on terms acceptable to the Swiss, in terms of repayment of those funds, and, in turn, loan the money to Mr. Moog and accept payment on an amortized basis. On the face of it, it would ~~■~~ appear as an

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(Mr. Shibley)

Equitable loan to Mr. Moog for the Hydro project.

Mr. Moog: And for Hydro it would be too, I would just like to comment, because they would only be faced with the US-Canadian exchange risk. I would just like to add that if that would have been the case; it was a good idea of mine, I think.

Mr. Shibley: Then it was an idea of yours?

Mr. Moog: Of course it was an idea. I said it.

Mr. Shibley: Mr. Moog, that's why it's not helpful, Mr. Chairman, to have the kind of interruptions that take place. That's all I was seeking from you wasn't it?

Mr. Finlayson: It's all right in the memo. Good Lord, you're trying to make a big thing out of nothing again.

Mr. Renwick: Mr. Chairman.

Mr. Chairman: Mr. Renwick.

Mr. Renwick: I want Mr. Finlayson to understand that his conduct at this committee is not helpful and I will move his exclusion ^{and} substitution of another counsel. We have an immense amount of work to do and I want Mr. Shibley to have, as our counsel, the opportunity to continue his line of questioning, without interruption, ^p by Mr. Finlayson, unless there is a point at issue at ~~which~~ ^{which} time I expect Mr. Finlayson to treat this committee with some sense of manner. I don't care how Mr. Finlayson conducts himself ~~anywhere~~ anywhere else. His conduct before this committee is unacceptable.

Mr. W. Newman: Mr. Chairman, I would like to ask Mr. Shibley a question because I'm somewhat at a loss to see where we're going. We've spent many thousands of pages of testimony ^y on the financial situation. What would it matter if this idea, which he has already said was an idea, supposing this did work out, what is wrong with it?

Mr. Moog:
Mr. Finlayson: I would like to know too.

Mr. Renwick: Mr. Chairman, may I interrupt at that point?
Mr. Newman, Mr. Shibley's obligation to this committee is to exhaust the ~~present~~ ^{present} possibility, within a broad range of relevancy,

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(Mr. Renwick)

otherwise we can't come to the conclusion. I think that anyone
looking at yesterday's discussions yesterday afternoon *... as they are of 1970*

(Tape H-1457 follows)

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(Mr. Renwick)

~~that anyone looking at yesterday's discussion yesterday afternoon~~
would understand that it was essential that Mr. Shibley question on those specific documents that we did -- there has been no other instance in the time over two months where, without signalling what his purpose is to a witness so that we can get the accurate direct testimony of the witness, not second guesses or rationalization, that we have got to rely on Mr. Shibley's view as to his questioning. I simply say that there has been no occasion on which the evidence which has come before the committee is not a justifiable question, as I see it. Now, what upsets counsel, counsel generally, is that Mr. Shibley is conducting direct examination; he is conducting cross-examination, and, where necessary, he is conducting re-examination and he, as counsel, is doing all three. This upsets other counsel. They don't understand that we have got to operate as a select committee in this ~~select~~ method and that is the way we are operating, ~~and~~ the method of questioning, the way in which Mr. Shibley questions, to my mind, I just think, is superb and I am most anxious that we not allow any interruption to Mr. Shibley when he is conducting that kind of questioning. If there is a specific objection by counsel for the witness to a specific item, I wish he would raise the matter. I wish ~~he~~ ^{he} would raise it courteously; if it is a matter which requires discussion by himself with counsel we can easily arrange an adjournment for the matter to be discussed, but I want our work to proceed now in an orderly, sensible, intelligent way so that all of us can get all of the evidence in and get the job completed. Now, I am going to ask Mr. Chairman that we try to follow that order, ~~and~~ here I am, having come this morning determined not to get involved in this kind of discussion, taking up the time of the committee, but let us please now proceed orderly, with dispatch, and as rapidly as possible ~~and~~ I just want to say and I think all of the members of the committee share this, that, I, for one, am totally satisfied that what Mr. Shibley has done in his examination of all witnesses to date has been with matters that we have to know ~~and~~ It is not of help to this committee to require counsel on each occasion to signal in advance the purpose of his

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questioning. Otherwise we are not getting the kind of ~~xxxx~~ testimony that we require.

Mr. W. Newman: Well, Mr. Chairman, I'd just like to say, and I agree with Mr. Renwick that we as a committee -- I hope you weren't referring to the committee when you said we shouldn't have a right to interrupt. I agree about your thought on counsel ~~long~~

Mr. Renwick: No, I wasn't.

Mr. W. Newman: I am not worrying about counsel but my point was, Mr. Chairman, not having a legal mind like some of our ~~xxx~~ learned friends around this committee have ~~long~~

Mr. Chairman: Maybe you are fortunate.

Mr. W. Newman: I was a little confused this morning as to why, if Equitable got the funds from Switzerland, or wherever they got the funds, what relevance it really has? That was all.

Mr. Chairman: Well, I think that is a reasonable question. ~~As~~ I say, one of the problems is when we are meeting in public all the time for counsel to either take instructions from us or him to tell us what his ~~xxx~~ intentions are, ~~and~~ I sit here as Chairman and find it one of the difficulties of my office. I may get from a whispered conversation with him a little more of his intentions sometimes than the rest of the committee do, so I perhaps have that much more insight; not that I am getting primed in advance, but sometimes I may ~~xxx~~ whisper to him and he will reply in that way. Now, Mr. William Hodgson, you had a question?

Mr. W. Hodgson: I was going to say something. Go on with what you ~~||~~ We are talking too much now. Let's go.

Mr. Chairman: I am ^{Hodgson? (Ren)} ~~Mr. R. G. Hodgson~~

Mr. W. Hodgson: There is too much free talking. Too much time taken up by talking. Let's go.

Mr. R. G. Hodgson: Well, Mr. Chairman, I am wondering you know, I can't quite grasp what we are trying to prove here at the moment. Certainly anyone, in my opinion, who ~~xxxx~~ conducts a project such as this certainly has to develop many financial proposals or prospects of obtaining money.

Tape H 1458 follows

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(Mr. Glen Hodgson)

~~a project such as this certainly has to develop many financial proposals or prospects of various kinds.~~ I think really I don't quite see how this leads up to which is the real determining point in my opinion and that is the understanding of Hydro, the ~~xx~~ terms ~~xx~~ that Hydro used in calculating the proposal, and in between this document that we've finally settled here as I understand it is an 8 per cent or less figure used, and I can't quite understand how the financial matters ^{of} ~~and~~ the firm in between ^{what} they might be trying to rearrange and so on has great moment for us and consideration and that's all. I was a little bit concerned where we might be going at this moment.

Mr. Chairman: Let us proceed at this moment. It may be that some of us can get together, or I may myself have an opportunity to talk with Mr. Shibley over the week-end and line up where we may be going on these things. I have heard from various members of the committee from time to time, again, concern about the length of time that we are taking and is everything we are doing relative. But I think ~~that~~ we should let Mr. Shibley proceed as he is trying to do this morning, and in the meantime, Mr. Moog, I see you have your hand up. I am going to first ask you, is that memorandum we have been talking about with the type-written initials "GWM" a memorandum that you prepared and you are identifying it?

Mr. Moog: Yes it is, Mr. Chairman.

Mr. Chairman: I will ~~make~~ mark it Exhibit 189.

Mr. Moog: I was just going to make a point to that very memorandum. You see I haven't really given my dissertation about how you arrange financing but maybe at another lecture I could do that one.

names in this
There are two ~~memoranda~~ memorandum again, which are now out in the open, people I have done business with, a lot of business, people who have now come to Canada, and because of my introducing them to this country, and my selling them to this country, have invested I ^{don't need} ~~don't need~~ how many millions of dollars. I have got a very preferred position with Equitable Life, and here

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(Mr. Moog)

I am forced to disclose two names which are already out in the open, and this goes on and on and on, and that is what I object to as a witness if I may please say that, with all respect, Mr. Chairman. That upsets me greatly. Just like the Swiss file was read yesterday. We go on and on in my own financial affairs and I am very upset about that. And I don't want to be ^{aggressive} ~~aggressive~~ and I don't want to be out of order or appear like my counsel is. I am sorry, *George*

Mr. Chairman: Well, I have asked for a little more moderation with everybody.

Mr. Moog: I like to stay calm and I like to help this committee with everything I can; I would even like to continue the case. Mr. Shibley is trying to make right now because I think I know what it is.

Mr. Chairman: All right, then, let Mr. Shibley continue.
Mr. Henderson:

Mr. Henderson: Mr. Chairman, I think the witness has a valid point here. Here are two names that I think it was pretty well agreed that these were not to become public knowledge.

Mr. Shibley: I am sorry, Mr. Henderson, these were not in the file in question. These were.

Mr. Moog: These were in the financial file, Mr. Shibley, if I may say that please.

Mr. Shibley: These were in --

Mr. Moog: ~~It~~ ^{was} was also handed to you in confidence as I understand from Mr. Laidlaw.

Mr. Shibley: Oh no, no that's not so. Mr. Moog; ~~isn't~~

~~isn't~~ Mr. Moog: I am sorry, *maybe I'm out of order.*

Mr. Shibley: On May 24 I was in receipt of your files that I understood were the files that related to the Hydro head office just like I received everyone's production without any limitations.

Mr. Moog: Mr. Shibley, Mr. Laidlaw's not here and I might have to just ---

Mr. Finlayson: Mr. Laidlaw's sending the file, give me a chance to look at it ~~with Mr. Moog~~ please.

Mr. Moog: I certainly made it clear to Mr. Laidlaw ---

Mr. Finlayson: Mr. Moog, would you kindly shut up.

Mr. Chairman: That is the kind of language that I don't think we need from anybody.

Mr. Finlayson: It's solicitor-client language.

Mr. Chairman: Well, I know but it's ---

Mr. Finlayson: It's privileged communication.

Mr. Chairman: It still goes on the record as far as this is concerned and, again, I plead for, well, not sanity but a little more milk of human kindness on the part of all concerned.

Mr. Renwick: Mr. Chairman, we're being diverted from the purpose of the inquiry. I enjoy the odd bit of humor as much as anyone else. I don't consider that Mr. Finlayson's latest interjection is in any different category than his previous interjections, whether he's jocular, bullying, or whatever his tactics are, I, for one, want to get on ^{with} the work of the committee. If there's some matter which now has to be discussed, would you mind recessing, I have work to do upstairs and I am quite happy to go upstairs and reconvene at any hour of the day or night, but for God's sake let's get on with it.

Mr. Chairman: Well, I think the question was whether this document was handed over in confidence or not in the sense ~~if it was~~ ~~was~~ the names we're not to be released.

~~Mr. Renwick: Mr. Chairman, someone has told us that it was not handed over in confidence~~

(Tape H-1459 follows)

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(Mr. Chairman)

~~not to be released.~~

Mr. Renwick: Mr. Chairman, counsel has told us that it was ~~not~~ handed over in confidence.

Mr. Chairman: Right. And I am accepting what counsel says. In the meantime, Mr. Finlayson was trying to find a file there to make reference to it, and I was, out of courtesy, going to give him a minute to do so. But I think that we can let Mr. Shibley proceed while he's looking.

Mr. Shibley: The letter from Mr. Laidlaw, Mr. Finlayson, did not remit the files. It simply remitted narratives from each of the people within Canada Square.

Mr. Finlayson: I've got that already. There is no reference to it.

Mr. Shibley: And what happened -

~~2-2-73~~ Mr. Finlayson: Was there no covering letter about the file?

Mr. Shibley: No. What happened is, on May 24 I sent someone to your office and received, we signed a receipt for the following: general correspondence file, financial file, material from Hydro file, negotiations and contracts file. And no terms of confidentiality or anything else attach to these. These were the files that were produced openly and without limit. And I feel quite free to tender any item in those files as an exhibit to this committee. ~~I am quite prepared to~~ I am quite prepared to exhibit the receipt for the files that we received. In fact, I will, so that we have a matter of record. And I might also again reiterate that the file that gave so much trouble was not among the files that we received on that day. I'd like that made an exhibit, Mr. Chairman.

Mr. Finlayson: Well, Mr. Chairman, I'm not going to extend this any longer. But I made my position perfectly clear that when I objected to not only the Swiss file, I included all

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(Mr. Finlayson)

other matters relating to these financial discussions. And I specifically mentioned two other sources, and I said that Mr. Shibley has those files. And I objected yesterday and specifically to that. So, my position is well on record, whatever Mr. Laidlaw's was, that I object to these kind of intimate discussions with financial institutions for the reasons I explained in some detail yesterday.

Mr. Chairman: All right, now. I have ~~been~~ had produced, and I think the committee should know what has been produced, It's a receipt or a copy of a receipt received from D.K. Laidlaw, Q.C., the following parts of the files entitled Canada Square Corporation re Ontario Hydro head office building enquiry. 1. General correspondence file. 2. Financial file. 3. Material from Hydro file. 4. Negotiations and contracts. And I'm going to mark that Exhibit 190.

Mr. Renwick: Mr. Chairman, if there are other documents which have names in it, which will, as I take it it's the personal names rather than the organization, perhaps it's the organization. Maybe we can follow -

Mr. Moog: It's both, Mr. Renwick.

Mr. Renwick: - the same method if that would expedite our hearing. ~~Mr. Chairman~~, the reason for my irritability is that my sole purpose in life is not sitting in this committee. As an illustration, I attending my riding clinic last night at six o'clock. I finished there at ten o'clock. There were 28 people in my riding who came to see me to ask me to assist them with ~~some~~ problems. Some of them are urgent matters and I'm going to have to deal with them at some point during the course of today and tomorrow, or otherwise I will not be fulfilling my responsibilities. Now, I'm in no different position than all of the other members of this committee. And that is only one small facet of the work which

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(Mr. Renwick)

a member is engaged in. We have an immense amount of serious legislation still ~~member~~ coming in the fall. We have the estimates coming in ~~the~~ the fall for numerous departments. A short session. And this is not the sole occupation of any member of this committee. And I want to get on in an orderly way. Now, there is, as there was yesterday, legitimacy in the matters of non-disclosure of names and particular institutions. If those are of concern to Mr. Moog or to counsel and we can avoid a problem by not disclosing the precise names, fine. If we have to disclose the names all right. But if that will facilitate it, let's get on with what we're doing.

Mr. Moog: Mr. Chairman.

Mr. Chairman: Yes, Mr. Moog.

Mr. Moog: I apologize if I spoke out of turn or out of order, but I am getting very concerned right now, if we are now going to disclose my financial file which Mr. Shibley has. It was certainly my understanding that it was to be treated confidentially. ~~.....~~

Tape H 1460 follows

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PLG

(Mr. Moog)

~~now being to disclose my ~~view~~ ~~with~~ Mr. Shibley has. It~~
~~was certainly my understanding that it was to be treated confidentially.~~

If that isn't happening and if there is no letter, I don't know. I don't know what happened between Mr. Laidlaw and Mr. Shibley, but I am very, very concerned, not just about the names. I am also concerned about, for instance, the content of my commitment letter. That bothers me greatly if that is going to be an exhibit in the newspapers, ~~and~~ You can well appreciate, I still have to build the Hydro building and I still have to raise some 40-odd million dollars.

Mr. Chairman: Mr. Moog, Mr. Renwick has made a suggestion. Is it possible to do as Mr. Renwick has suggested, Mr. Shibley?

Mr. Shibley: I'll have to ~~xxx~~ consider that as I go along, Mr. Chairman. I want to make two things clear, however. The name Equitable has been in the record of evidence repeatedly, long before this. It is in Hydro material; it was mentioned voluntarily by this witness ~~xxxx~~ earlier. It has not been a big secret.

Mr. Moog: Mr. Shibley ~~xxxx~~

Mr. Shibley: Just hold on, Mr. Moog. Wait for a minute. What is disturbing to me is, I took the first twenty minutes of this morning to re-orientate ~~me~~ this committee as to the other evidence that you should have had in mind as I led this evidence on this document. ^A And the interruption that has taken place has ~~xi~~ washed that orientation right out of your minds, and that is what I object to. ^A And whether ~~xxxx~~ intentionally or otherwise, however it has happened, your minds now are not in a -- you are not seized of the surrounding circumstances that I took such efforts to establish in your thinking so that you could relate what I am now questioning the witness about everything else, ~~and~~ Frankly, I am going to go right back over it again.

Mr. Chairman: Mr. Shibley, as to the committee members' minds -- we ~~had~~ have it on the record and this is really what we will be drawing our final report from ^{from} the record.

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Mr. Shibley: Well, Mr. Chairman, my only point is this; that I don't like to call it a tactic, but I can tell you, however it happens, that when counsel is in the course of a sequential line of examination, the kind of extended interruption that has just taken place makes it impossible for the people who are adjudicating on this, ^{now} ~~the~~ the eleven of you, to really get the full force and meaning of what is being answered, ~~and~~ I am very ~~much~~ disturbed to think that that is happening repeatedly in the course of the examination of this witness. I am not going to say ~~me~~ anything more about it.

Mr. Bullbrook: I am going to make a comment if I may. I thought the thrust of Mr. Renwick's remarks ~~/~~ I understood his original interruption to be completely unconnected with my feeling and my attitude right now. I tell you I have been late this morning for the first time because of the fact that I had some constituency matters to take care of, But I am very concerned, Mr. Chairman, and I want to tell you that I think it was Monday or Tuesday that I approached my colleague, Mr. Gaunt, as to the possibility of a statement by the Liberal members, ~~and~~ I don't mean to distinguish our function from a partisan point of view, but I do feel that the party has a responsibility to convey its attitude as to the proceedings. It was especially directed towards Mr. Finlayson's conduct because what I feel is this; that his conduct is making me, not necessarily not aware of the evidence, but is misdirecting me from my function and responsibility here, ~~and~~ I don't want to personalize about Mr. Finlayson because I really don't think his conduct is worthy of personalizing, but this is the type of thing that we don't have to put up with. We don't have to put up with a witness telling his counsel to shut up.

Mr. Moog: He told me! I am sorry.

Mr. Bullbrook: We don't have to put up with a counsel telling ~~and~~ witness to shut up; we don't have to put up with constant misstatements of fact by counsel; and I can catalogue ~~that~~ these if you wish.

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Mr. Finlayson: I wish you would.

Mr. Bullbrook: We don't have to put up with insult
from one counsel to another. I tell you, I have always felt that
the absolute essential ingredient of a counsel is courage. Without
the courage and determination to protect his client he is not
worthy of the silk or cotton that he takes. But we have seen not
courage displayed here; but frankly we have seen almost an
offensive disrespect for us as an arm of the Legislature. ~~The~~
~~Speaker of the House, Sir, would not~~

Tape H 1461 follows

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E.M.

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(Mr. Bulhbrook)

~~but frankly we've seen almost an offensive disrespect for us~~
~~as an arm of the Legislature.~~ The Speaker of the House, sir,
would not for one moment permit the representatives of the
public in session to be subjected to what we have been subjected
to.

So therefore I concur in this, that Mr. Shibley has
said, please don't permit us to be misdirected, Mr. Chairman,
we look to you for protection in this respect.

Mr. Chairman: Are there any other comments now?

Mr. Moog, I indicated that I would let you make a comment in
regard to this.

Mr. Moog: Thank you very much, Mr. Chairman.

We are right back to the very crucial area of
financing and I had more or less prepared my own statement;
apart from Mr. Finlayson's 11 pages I ~~am~~ have a one-page state-
ment, which I would say very powerful in a way if people
understand the language and ^{if} I may be permitted to read it, it
is only one page ---

Mr. Chairman: One page, proceed.

Mr. Henderson: In German?

Mr. Moog: Not in German, Mr. Henderson. Would
you like it in German?

"Confidence and money are closely related both in
the case of nations and in the case of private individuals.
The value of a nation's currency depends upon the level of
~~confidence~~ confidence with which it is regarded, for instance gold
vs. paper banking, and the ability of a nation to borrow depends
upon the confidence of lenders. In the same way the
confidence that lenders have in a borrower is critical to the
borrower's ability to obtain funds when required.

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(Mr. Moog)

"Before a borrower can obtain a commitment from a financial institution for many millions of dollars, the borrower must not only make provisions for suitable security, but also obtain the confidence of the lender, who must be convinced that the borrower will indeed be able to proceed with the project as planned before it will commit its funds. In managing and planning the use of its funds a lender must schedule its loans several years in advance and must be confident^T that it will be able to loan its funds with adequate security at the agreed rate of interest in accordance with such schedule.

The ~~lender~~ lender must, therefore, have confidence in the borrower and its ability to perform and ^{this} ~~his~~ confidence can only be built up slowly and with great care. It is, therefore, not surprising that in the financial community, both in Canada and the United States and abroad, relations and negotiations are kept completely confidential. Any breach of this confidentiality by a borrower can only result in a reduction in, or the complete destruction of, the confidence that the lender has in the borrower and in its ability to perform."

You can make that an exhibit, if you wish.

Mr. Chairman: No, I think it is on the record, Mr. Moog. I think we all understand it, the position. I as Chairman have a duty to protect the dignity of the ~~may~~ committee, I also have a duty to make sure that the rights of the individual are respected too and I have said two or three times that no one was ^{on} ~~was~~ trial here and I think we all realize that Mr. Moog is ^a ~~a~~ business man, successful in past performance and he also has future expectations. We don't want to ~~be~~ prejudice those things, and we are all agreed to that. Mr. Renwick has made

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2(Mr.Chairman)

a suggestion how this might be done, we have a duty to the public as well to reveal these things where they are pertinent. Mr. Shibley I think has this in mind, what he has said as far as Prudential is concerned, this is not a new name for us. I am sorry.

~~Mr. Shibley:~~

~~Mr. Shibley:~~ Now, Equitable is the name I had in mind here. Now, Mr. Moog, you ^{MAY BE} ~~are~~ giving something away that I don't know.

Mr. Moog: I forgive you, Mr. Chairman.

Mr. Chairman: In any event, whatever these names are, the more fuss that you and your counsel make on these things, the more attention is drawn to them.

Now, Mr. Renwick has made a suggestion which I believe to be a good suggestion and I am going to ask that Mr. Shibley proceed with Mr. Renwick's suggestion in mind and unless the name has been ~~was~~ used previously and used properly, Mr. Moog, previously, that is, used correctly, then if he would proceed in that way and not use it again unless it has been used before.

Mr. Shibley: Just so that my friend, Mr. Finlayson, can consider it before I reach that point, there are two other pieces of correspondence with Equitable, one dated September 28, 1970.

(Tape H-1462 follows)

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fvk

(Mr. Shibley)

~~..... consider before I reach that point. There are two other~~
pieces of correspondence with Equitable, one dated September 28, I'm sorry, the next one being August 16, 1972 and the next being September 28, 1972. Would he please consider whether any part of those two letters, in any sense, would embarrass his client in terms of names disclosed therein because I intend to tender them as exhibits to this committee.

Mr. Finlayson: I didn't bring my file with me. Could I just see a copy of them?

Mr. Shibley: Yes, surely.

Mr. Moog: May I too, please?

~~Interjection by an hon. member (inaudible).~~

Mr. M Shibley: ~~Mr.~~ I can go on while they are looking.

Mr. Chairman: Let's keep going. We haven't covered much ground this morning. I'd like to keep moving.

Mr. Shibley: Mr. Moog, I want to return to what is now exhibit 189 and I again refer to - this is your memorandum of June 21, 1972, the last paragraph wherein you talk about ~~the~~ "a ^{funds} *put-through deal* whereby ^{funds} we organize ^{funds} for Equitable in Switzerland, Equitable charges a mark-up and loans us the money with us compensating for any exchange ~~rate~~ rate."

Mr. Moog: Risk.

Mr. Shibley: Now, to bring about this type of transaction costs your company money, does it not?

Mr. Moog: Oh, it certainly would.

Mr. Shibley: It would be much cheaper to borrow direct from the Swiss banks rather than putting ~~a~~ it through Equitable.

Mr. Moog: That depends. What I had in mind was about 1/4 per cent difference, which is not very much. As a matter of fact at one time, I thought I might ~~be~~ get it for less than that, in my own mind, that is. It never came to anything definite on it.

Mr. Shibley: The reason you'd only pay 1/4 per cent was that, in fact, Equitable wasn't dipping into its own funds

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(Mr. Shibley)

to make you the loan, it was receiving the money from Switzerland.

Mr. Moog: If you wish, I would at that point, ~~give you~~
^{WORKING} ~~be working~~ for Equitable. I'm trying to make that point clear.

Mr. Shibley: Mr. Moog, the reason is that the mark-up is only 1/4 per cent is because Equitable would really not be using its own funds, it would be using funds that you had ~~arranged~~ arranged for the Swiss bank to provide to Equitable.

Mr. Moog: Mr. Shibley, depending on the ~~consumation~~ consumation of the agreement. That is, if the terms coincide with Equitable's terms so the same amortization ~~with Equitable~~ which Equitable would require, all that sort of thing. There are many terms relevant to that, assuming the risks, getting the money, paying the underwriting fees and everything, I would have hoped to do that. That was certainly an ~~idea~~ idea in my mind.

Mr. Shibley: What would the rate work out to, as you say, with the costs that you got inherent in the mark-up? What would the ultimate rate have been?

Mr. Moog: I really can't give you an exact answer. All I said to you a minute ago was -

Mr. Shibley: Give me your best -

Mr. Moog: - I would have hoped to get it from Equitable perhaps a quarter per cent more, like six and three-quarters.

Mr. Shibley: And with the mark-up on bringing the money from Switzerland to -

Mr. Moog: I hadn't gone to that extent.

Mr. Shibley: What would it be, Mr. Moog?

Mr. Moog: I can't give you a quick answer. I won't give you a quick answer because it won't be ^a right answer, please. It has to be ~~calculated~~ calculated. It isn't quite that simple.

Mr. Shibley: Would you do that, please?

Mr. Moog: Should I?

Mr. Shibley: Yes, please.

Mr. Finlayson: Mr. Shibley, I was reading his correspondence. What is you asked the witness to do?

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fvk

(Mr. Shibley: I'm asking him to calculate what the rate of interest on the loan from Equitable to him would be on the basis of he having arranged for Swiss funds to be provided to Equitable and Equitable putting it through - I'm sorry - using what ~~was~~ they described as a "put-through", Equitable then, in turn, relending it to him ^{BUILDING} ~~building~~ in, in addition to the basic Swiss rate of six and a half per cent, the cost of bringing the money over and the quarter per cent mark-up for Equitable having any involvement at all?

Mr. Finlayson: I'm just told by Mr. Coles that can't be done. If you want to give us an opportunity to consider that question we ~~will~~ certainly shall.

Mr. Shibley: What I would like to know, quite frankly, is whether it equates with 8 per cent.

Mr. Finlayson: We'll look into that. It's not the kind of calculation, if it can be done, and Mr. Coles tells me it can't, that the witness could do in the witness box.

Mr. Shibley: Just ~~as~~ to make it clear to all members of the committee, what did you do to pursue this thought, Mr. Moog?

Mr. Moog: Nothing much at all. It was just an idea I had.

Mr. Shibley: What did you do?

Mr. Moog: I called Mr. Keegan and I think quite a lot previous to that, in the beginning.....

(Tape H-1463 follows)

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(Mr. Moog)

...called Mr. Keegan ~~and~~ I think quite a lot previous to that, in the beginning, I think I talked to some other people in Equitable about my ideas. I've been talking to them quite frequently. I make that a practice to keep myself informed. I put ideas up to them and say, "How would you bounce if I did so and so".

Mr. Shibley: Yes, and ~~long~~

Mr. Moog: Quite a normal business procedure.

Mr. Shibley: Mr. Moog, I'm trying to keep it short. I'll only want to know ~~long~~

Mr. Moog: Your trying to make ~~long~~

Mr. Shibley: ...what you actually did, not what you often do or anything like that.

Mr. Moog: ~~Oh~~ Well, no, I did in this case, too. I did talk to people in Equitable Life about that sort of a thing. I one time talked about what we called, in our own office a "wrap-around deal"; if we had Swiss financing of say, \$20 million, ~~maybe we would wrap around an American loan.~~

Mr. Shibley: And were you still talking in those terms with Equitable on July 19, 1972?

Mr. Moog: I had this particular discussion with Mr. Keegan at that time.

Mr. Shibley: Yes.

Mr. Moog: Just as a matter of interest ~~long~~

Mr. Shibley: And is it then a situation where, whatever conversations you had with Candy at about that time, wherein you told him that you anticipated the whole of the funding for Hydro's head office building would be Swiss, you were intending Swiss funds to be put through Equitable. Is that correct?

Mr. Moog: I think I should correct on one point, I think the last conversation I had with Candy on any funding was the one we discussed yesterday, when we talked about the \$40 million.

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Mr. Shibley: That's what I'm talking about.

Mr. Moog: Yes, well, that's when I talked to Candy about ~~(no, that's nothing to do with that, that~~ would be \$40 million Swiss francs ~~(I'm sorry, \$40 million raised in Switzerland & somehow or another, through an underwriting with a smaller bank and with - well, different constellation/consideration in Switzerland, that's what I had in mind at that time to do if we couldn't get, as I told you yesterday, a decent interest rate in the States. I always thought of ending up in the U.S. and using, perhaps, these connections I have in Switzerland, if you wish, as a negotiation point with these people in Equitable and, as a matter of fact, even in the one I have finalized my deal with.~~

Mr. Shibley: Why would you want to deal with a U.S. company at even a one-quarter per cent mark-up when you could have dealt directly with the Swiss?

Mr. Moog: Mr. Shibley, it was to get the money from the U.S. and making it easy for the U.S. to get the money from Europe, because in the U.S. often there are just serious capital shortages and you go through cycles, depending on the economy.

Mr. Shibley: I think you are missing my question.

Mr. Moog: No, I don't miss it at all.

Mr. Shibley: I want to know why, whatever the mark-up, you would process this money through a U.S. corporation, rather than deal directly and have the Swiss appear as the lending institution?

Mr. Moog: ^{Basically,} ~~I~~ I wanted somebody to take the risk off my hands to re-finance this deal in 15 years, when it comes due. If I could do that with a U. S. financial institution, who ~~would~~ ^{would} then give me a 30 year commitment, which is extremely difficult to get, and I don't think even Hydro had any of those lately by the way, then I think I would entice the U.S. or a financial institution to take that risk off my hand. I didn't like that risk.

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Mr. Shibley: I see.

Mr. Moog: If you have a ~~lot~~ ^{balloon} payment in 15 years, that's very serious.

Mr. Shibley: So, that, you have now introduced a new element?

Mr. Moog: No, I ~~didn't~~ ^{did} introduce that element yesterday; that that is a serious problem.

Mr. Shibley: I know you did, but it's a new element in the put-through of Swiss funds through an American company, that this was going to now solve the amortization problem.

Mr. Moog: I tried to solve it that way.

Mr. Shibley: Is that right?

Mr. Moog: This is the ~~hypothetical~~ financial structures in my mind.

Mr. Shibley: Mr. Moog, you were going to solve the amortization problem that attached to bringing Swiss money over?

Mr. Moog: I would hope, if they would accept a that proposition, and you are now talking about my internal financial dealings ~~at~~ which again, to me, ought to be private, confidential and secret.

Mr. Shibley: Mr. Moog, there are a lot of private, confidential, secret things that had to be tabled before the committee.

Mr. Moog: I still have to build and finance a building and nobody around here will do that for me!


Mr. Shibley: I'd like to go on. You then, in addition to the amortization problem, have mentioned the ~~any~~

Mr. Finlayson: Just a minute, Mr. Chairman, I, at the risk of having another ~~round~~ ^{barrage} of criticism, I have now looked at the two letters, if my friend wants to introduce in evidence, and ~~again~~ ^{once} again, I would offer to sit down with him and the witness and the witness can explain ~~it~~ it to him, off the record, if he thinks there is ~~something~~ something sinister in it.

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(Mr. Finlayson)

But what is so wrong about all of this is this is Mr. Moog bouncing various ideas, as he says, off various financial institutions; and in the cases that we have been dealing with so far, he wasn't successful in making a deal but these are his ideas. ~~You are really paying into his mind about the man's goals for raising money and a lot of people are just going to school on Mr. Moog's expectations here, not anybody on this~~



H-1464 to follow

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PLG

(Mr. Finlayson)

you are really prying into his mind about the man's genius for arranging money, and a lot of people are just going to school on Mr. Moog's expertise here. NOT anybody on this particular committee, but the public are following these proceedings and that is precisely what you are doing and it is grossly unfair.

Mr. Chairman: Mr. Finlayson, whether it is unfair or not, the problem is that you made ~~some~~ great objections to some of these documents coming in yesterday, and after they were admitted, I think it appeared to the committee they were relevant and I could not see that any harm was done or any names or any great information released. Now, you ...

Mr. Finlayson: There wasn't a single thing in those documents that I didn't state to this committee that was in those documents.

Mr. Chairman: Well all right. Now you are suggesting that we have to rely on that rather than seeing the documents and...

Mr. Finlayson: The counsel saw the documents. I didn't ask you to rely on me.

Mr. Chairman: All right, but in any event there was no harm, to my way of thinking, in the admission of those documents which you objected to so strenuously the other day.

Mr. Moog: I don't agree with that Mr. Chairman if I may say that.

Mr. Bullbrook: May I make an assertion here. I consider it very probative that the "hypothetical", to use Mr. Moog's phrase, the bouncing off financial institutions, to quote counsel's phrase, very probative, ~~because~~ of the fact that he made a commitment to Hydro. That is why, and one of our terms of reference has to be an assessment of Hydro's position in this and to ~~not~~ properly assess Hydro's position I take it that we have to assess the ability of the developer, concurrent with that commitment to deliver.

Mr. Allan: I wonder Mr. Chairman...

Mr. Chairman: Mr. Allan.

Mr. Allan: ..if I could check my recollection. I seem to recollect that Mr. Moog in his evidence yesterday, stated that the

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PLG

(Mr. Allan)

date of July, I think it is, I am not at all certain of the date, that he had no arrangements.

Mr. Moog: I had no committment Mr. Allan.

Mr. Allan: No committment.

Mr. Moog: I made that quite clear. I had no committment until the close of the Hydro deal as a matter of fact.

Mr. Shibley: At the moment Mr. Allan, what I am really trying -- and members of the committee, Mr. Chairman, I am trying to ascertain what was the actual source of funds for this building. Now as of June 21, as now displayed by Exhibit 189, it is made to appear that although Equitable would present itself as the lending institution, the base source of funds would have been Swiss, and I am interested in pursuing this because of the representations to Hydro that it was to be Swiss, as at the time Hydro considered its contract on July 19. I intend also to similarly inquire as to if it was to have been Swiss at that time, and effected in this manner, what happened thereafter and, you see Mr. Moog, may I remind you of your evidence yesterday again. You remember the evidence that when Mr. Candy met with you on March 30, you got down to find out whether the Swiss funding was secure, you got down to talking about government tax? Is that right?

Mr. Moog: I mentioned that would be part of it. Please read it in the context I stated it.

Mr. Shibley: And you would absorb that tax? Right?

Mr. Moog: Yes I said that. As stated yesterday.

Mr. Shibley: And bearing in mind also Mr. Moog, that you had a meeting. The only indication we have of some continuing communication between you and the same Swiss bank, during the period March 30, 1972 and July 1972, was when you met a representative of that same Swiss bank in May, here in Toronto. You remember that?

Mr. Moog: May I speak now?

Mr. Shibley: No, Having reminded you of that, what I would like to ask you about is this; did you discuss with that Swiss banker in Toronto, first of all that their bank would put up the whole

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PLG

(Mr. Shibley)

of the funding...

Mr. Moog: No and I said no yesterday.

Mr. Shibley: All right. Did you discuss with that
banker that he would do a put through deal with Equitable?

Mr. Moog: No and I said no.

Mr. Shibley: All right. Did you at any time prior
to July 19 discuss with that same Swiss bank...

Mr. Moog: I never discussed this with Switzerland at all.
This was in my mind.

Mr. Shibley: I see. But you did discuss it with
Equitable?

Mr. Moog: That's right.

Mr. Shibley: Did you have correspondence with Equitable?

Mr. Moog: Well, you have seen a memo to me and

Tape H 1465 follows

~~Mr. Shibley: Did you did have to with Equitable?~~

~~Mr. Moog: That's right.~~

Mr. Shibley: Did you have correspondence with Equitable?

Mr. Moog: Well, you've seen a memo to me and I don't know whether I had anything else in a letter or not. I sometimes put things down and send them down for an opinion. I don't think there is actually.

Mr. Shibley: Well, I'd like to know. I'm not prepared to accept that answer, Mr. Moog. I want to know, other than the documents I've received, which you have now seen and there are only three - the memo of your own of June 21 and the two letters -

Mr. Moog: I'd like to clear it up.

Mr. Shibley: Is there any other correspondence or memoranda or documentation of any nature or kind whatsoever?

Mr. Moog: Nothing but what you've got. You've got the file.

Mr. Shibley: All right.

Mr. Moog: Mr. Chairman, maybe I can help this committee and yourself to clear up this big mystery, if I may try. I may not be good at it, but let me try. If you put a proposition like a major deal like Hydro together, you work on one end on various financial sources, while you work on the other end on the deal itself. You work both of them up until they culminate and, hopefully, join in the end. You do not take out any financial commitments until you've got a commitment of a tenancy, nor the other way around. That's quite common practice. There is nothing secret, mystic, Swiss myth, or anything about what we are discussing. I want to make this absolutely clear right now and I might save this committee an awful lot of time. I just wanted to make that statement very emphatically.

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Mr. Bullbrook: I want to clarify that. Mr. Moog, isn't it a fact however, recognizing that you ~~don't~~ don't get a unilateral commitment from anybody until you have a commitment from a tenant, isn't it a fact though that you do, in most situations of a proposal nature and I'm no longer talking as I did yesterday about speculative building. I'm saying that isn't it a fact that on a proposal matter that you just don't hypothesize in your own mind, financing ---

Mr. Moog: Yes, I do, Mr. Bullbrook.

Mr. Bullbrook: Well, I suggest to you ---

Mr. Moog: I've done it the last time on OISE. I had dug a hole and I didn't know at all what was going to happen. I had nothing at that time.

Mr. Bullbrook: So, that in point of fact, on a proposal deal, as distinguished from speculative building, that you make a commitment -

Mr. Moog: To a tenant.

Mr. Bullbrook: - to the institution or the tenant without having any arrangements made at all?

Mr. Moog: Well, I wouldn't say any arrangements. I would have a very good idea where I could fall back on if things materialised. But you never really make the two meet at exactly the same point of time, as I haven't been able to do at this moment on this deal.

Mr. Shibley: Where were you going to fall back on?

Mr. Moog: On wherever the market would be best when I have a signed agreement in my hot little hand.

Mr. Shibley: I see. Well now -

Mr. Genest: Mr. Shibley, while we're sort of off the track -

Mr. Moog: No, we're on the track, Mr. Genest.

Mr. Genest: I'm sorry. I didn't mean that at Mr. Moog. I think Mr. Renwick and you ~~at~~ asked yesterday for me to double check as to when Hydro was first informed by Mr. Moog

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(Mr. Genest)

that his rental rate of \$4.92 was firm, regardless of how high his rate of financing was. And I think I referred you to Exhibit 69, which is a memorandum of Mr. Mink, dated April 13, 1972, which I am instructed is the date on which, or about the date on which Hydro was informed by Canada Square that there would be no adjustment to their quoted rental rate of \$4.92 if their financing costs should increase.

Mr. Shibley: Well then, Mr. Moog, did you discuss with anyone within Hydro, and in particular, Mr. Candy, but anyone at all, your thinking about doing a "put-through deal"?

Mr. Moog: Never ever. Mr. Candy wouldn't know what I meant if I said it. I'm sure and I ^{mean} ~~have~~ no disrespect ~~to~~ ^{for} Mr. Candy.

Mr. Shibley: When you contemplated, or when you anticipated getting the whole of your funding for this project as reported by Mr. Candy on July 19, was it going to be by way of a "put-through" through Equitable?

Mr. Moog: I would think not. I think at that time I had in my mind to raise it directly, pay whatever I had to pay to whoever I dealt with in Switzerland, whatever fee was applicable and just take my chances. In case I couldn't get the American sources below the rate - well, you've just seen it. 8-1/2 to 9 per cent. I wouldn't be able to build the building I'm building with this interest rate.

Mr. Shibley: I understand that.

Mr. Moog: I would have to cut corners.

Mr. Shibley: I understand that. The prevailing interest rate in the United States at that time was 8-1/2 to 9. Did it continue at that rate right up till November?

Mr. Moog: That . . .

(Mr. Shibley)

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JLP

prevailing interest rate in United States about that time was 8-1/2 - 9. Did it continue at that rate up until November?

Mr. Moog: You've had the other people stating that they were figuring to pay in that range.

Mr. Shibley: They did?

Mr. Moog: That's the evidence.

Mr. Shibley: What's your evidence? Did the rate ~~not~~ available to you for U.S. funds continue to be 8-1/2 - 9 per cent in 1972?

Mr. Moog: I would think that's generally correct, yes. Unless somebody gets down, like myself, and drives a bargain.

Mr. Shibley: Yes, that's right.

Mr. Moog: Right.

Mr. Shibley: Mr. Moog, the rate you actually got in your ultimate financing was what?

Mr. Moog: I really wouldn't want to disclose that rate.

~~Mr. Finlayson: I want you to disclose it.~~

Mr. Shibley: I want you to disclose it.

Mr. Finlayson: You know what the figure is, you've got the...

Mr. Shibley: And I think it's material, Mr. Chairman.

Mr. Finlayson: Well, it's not, and I'm getting tough about this and I'm going to instruct the witness not to answer this question.

Moog:

Mr. ~~Chairman~~: ~~All right~~ I'm with you.

Mr. Chairman: All right now, gentlemen of the committee.

Mr. Shibley: Mr. Moog, I want to know whether the ultimate financing itself was a put-through deal.

Mr. Moog: No, Mr. Shibley, the Swiss myth is completely gone. It hasn't ever been there.

Mr. Shibley: I'm not talking about Swiss myths. I'm asking you whether the ultimate financing was a put-through deal?

Mr. Moog: I said "no".

Mr. Shibley: Well, then, in order to test that, your having said that the prevailing rate for money to you in the U.S. was 8-1/2 - 9 per cent

Mr. Moog: I didn't say to me, I said the general prevailing rate.

Mr. Shibley: I asked you quite specifically, and Hansard will read for itself.

Mr. Moog: Yes.

Mr. Shibley: I am obliged to ask you what the rate was to you on the ultimate financing.

Mr. Finlayson: You know that question.

Mr. Shibley: I know it and I think it's probative of whether it was a put-through or not.

Mr. Moog: It was not a put-through and it isn't a put-through, I am very glad to say that.

Mr. Shibley: I have to test that, Mr. Moog.

Mr. Moog: Yes, please go ahead.

Mr. Shibley: I want the rate.

Mr. Finlayson: No, don't give it to him.

Mr. Shibley: I'm sorry, members of the committee, but you understand that when I was asking about this memorandum, the base rate is 6-1/2; there are certain costs of money to bring it in; there's a very small mark-up - right? And that's a way of having money from U.S. sources at lower than 8-1/2 - 9 per cent according to the witness's own testimony. And I think

Mr. Moog: Well that

Mr. Shibley: And I think it's relevant, therefore, to ascertain what the actual rate on the ultimate financing was, to determine whether, in fact, the ultimate financing was a put-through deal with Swiss funding.

Mr. Moog: Mr. Shibley, can I say once more, I'm under oath, I have not ever done any Swiss banking dealing or any other dealing like this on this Hydro deal at all with anybody in the U.S. I have made my decisions but I have not closed any deal, I have not made any put-through; it's strictly U.S. money.

Mr. Shibley: I want to take you even closer to the rate. I show you Exhibit 69, dated April 13, 1972, to which my friend, Mr. Genest, has just referred.

Mr. Bullbrook: Does he have it?

Mr. Shibley: Could he have it please.

Mr. Moog: What was the exhibit?

Mr. Shibley: Exhibit 69, April 13.

Mr. Moog: All right.

Mr. Shibley: You note as at that time it says "It is likely that the composite financing cost to Canada Square will be nearer to 8 per cent than the originally quoted rate of 7."

Mr. Moog: All right.

Mr. Shibley: All right. Mr. Chairman, I can't get along without an answer to my question as to what the ultimate rate is because I don't see that it's prejudicial to this witness in any respect, and I think it's highly propagative as to whether or not it was a put-through deal.

Mr. Moog: I couldn't get that rate again today if I tried to and that's why I don't want to ~~ask~~ ^{ask} the question.

Mr. Chairman: Mr. Moog, just a ~~minute~~ ^{minute}, I want to ask Mr. Shibley, you say it is important. What is the ~~at~~ end result of, even if your suspicion, or what you believe may be the case is the case?

Mr. Shibley: Well, Mr. Chairman, you are putting me in a very awkward position again, but I am prepared to answer if ~~y~~ the committee directs me to. But the situation is this: on August 13, 1971, there was an attendance on a Swiss bank; there was no communication by this witness with any other Swiss bank on his own

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JLP

(Mr. Shibley)

testimony as at July 19, on which date Mr. Candy was reporting commission to the ~~committee~~ on the very day, approving of the contract, that the whole of the funding was Swiss. On June 21, there is now a memorandum evidencing the manner in which this witness was then thinking of arranging such Swiss financing, namely by a put-through through Equitable. In that respect, it is clear that - there are a variety of purposes, one is to keep the rate of interest down because Swiss money is cheap; ~~you add the cost of bringing it over, and a very small mark-up because Equitable can't~~ putting up

(Tape H-1467 follows)

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PLG

(Mr. Shibley)

~~the rate of interest on the loan was 8 1/2 per cent.~~ You add the cost of bringing it over and a very small mark-up because Equitable isn't putting up its own funds. It is actually only acting as a conduit for Swiss funds. That is why I asked for a computation because ^{if} it equates with something less than 8 1/2 or 9 per cent, then it becomes significant. I am trying to identify the nature of the ultimate financing and I have to compare the actual rate of the ultimate financing with what was normal in the U.S. at that time; namely, 8 1/2 to 9 per cent. Let us say, if we were to speculate, that that rate is lower, that is a circumstance of evidence that will lead me to ask, "Well why should it have been lower and was it a put-through etc." If it was equal to it, then of course that is probative of the fact that it was not a put-through deal. I am entitled to test this witness's answer as to whether or not it was a put-through deal in the manner I am pursuing.

Mr. Finlayson: You have the answer. Mr. Shibley, this is the thing that doesn't make any sense to me. It isn't as if you don't know what the answer is. You have it yourself. If you want to go and make your own mathematical computations, you are perfectly at liberty to do so. Now this isn't a case, and this I want to impress on everybody, of a witness who has refused to disclose a particular figure. What he doesn't want to do is disclose it in public and Mr. Laidlaw showed Mr. Shibley the letter from this particular American financial institution. The figure is in there and we know what the contract between Ontario Hydro and Canada Square provides with respect to interest rates, and with great respect, this is nothing more than an attempt to embarrass this witness in public. And it certainly is going to have the effect of making it almost impossible for this man to deal with these institutions if they think that they are going to have to have all of their negotiations and things of that nature, dragged out in public. Now if it was a question of a witness saying, "I won't tell you under any circumstances," there might be something to what Mr. Shibley said. He is ~~going~~ ^{trying} to elicit a lot of ~~sworn~~ suspicion when he

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(Mr. Finlayson)

knows the answer himself

Mr. Chairman: Well of course, he knowing the answer doesn't permit the committee to use it ^{if} as they feel it is relevant.

Mr. Bullbrook: I wanted to speak to that very matter, Sir.

Mr. Chairman: Mr. Bullbrook.

Mr. ~~Chairman~~ Bullbrook: The fact that Mr. Shibley has the information will not assist us one bit in writing our report, and that is the essence of our responsibility. I tell you, that I want to put it to you this way without reservation: we are now at the moment of truth, and whether Mr. Shibley is tying it in to testing the credibility of the witness as to whether it is a put-through deal or not, in my respectful submission begs the question. We cannot possibly, ~~have our~~ ^{having regard to} the evidence given us and ~~our~~ our obligations under the ~~fixed~~ six terms of reference that we laid upon ourselves, come to a conclusion as to advantage or undue advantage, without knowing the effective rate of interest. The evidence is replete on the part of Hydro that their considerations were quite, quite affected by the ~~financial~~ rate of interest. I refer you to Exhibit 67 under the Title "531 Financial" being the key submission of Mr. Candy to the Commission which says in the last paragraph:

"The most notable aspect of these rates is that they are only marginally higher than Hydro's internal rate of long-term borrowing" and I can go on and refer you to other exhibits wherein Hydro took into consideration in coming to their judgment, which we don't say is a wrong judgment, but they took that into consideration, the rate of interest, and goodness gracious, we have -- ~~xxxxxxx~~ be it a hypothetical rate of interest or not at that time, and this causes me great concern that frankly, Hydro, unbeknownst to them were dealing in effect with a hypothetical rate of interest ~~at~~ at that time, but that is for us to assess at some other occasion, *But* surely the firm rate of interest, it certainly must be our obligation to know that to make an ultimate assessment in this case.

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Mr. Moog: Mr. Chairman, I may be able to *help*.

Mr. Chairman: Now just a minute Mr. Moog. Mr. Walker.

Mr. Walker: Mr. Chairman, I get terribly concerned that

we stray at times a long way from ~~the~~ what the real purpose of the committee is. We must remember that the original purpose of the committee was to determine if there was some form of influence ~~emanating~~ *Some non members: No* emanating from certain offices, and consider the aspect of the threat, and those are the two crucial purposes. After that we have to pursue along to find out if things are

Tape H 1468 follows

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M.R.

(Mr. Walker)

~~... purposes? After that we have to pursue -- after that, we have to pursue along to find out if things are~~ reasonably in order. You must keep in mind that we are going into every possible avenue and I'm not sure that it's warranted, especially when we get into this area ~~and~~ now of getting directly into the financial affairs. I was going to raise a concern a little while ago about the matter, and other people raised it and it seemed to be handled quite well. I'm concerned that we are going far too far into this material.

You know, the information of the rate that Mr. Moog received, to my mind, will not ~~influence~~ influence the writing of the report if it were three per cent or 20 per cent, for that matter, because you must keep in mind that there is a fixed rate ^{at} which the contract was signed. I think it's \$4.92 a foot. There is a mechanism by which it will be determined that the cost per foot is the quality demanded by Hydro.

All of these make me wonder why we are going so far into this area, other than for pure ~~pure~~ ^{and prudent} interest. I think, Mr. Chairman, we have to keep on track. We can go for a long exploration but it's really not going to change the situation when it comes time to write the report.

Mr. Renwick: Mr. Chairman, before this gets into a general - gets into some general area of discussion which will not be helpful at all. I have a question which ~~it~~ I'd like to, if we could have a brief recess, have a word with Mr. Shibley and with Mr. McCallum, if he would, which may help me with this problem because I recognize the sensitivity of it. If we could have a brief recess it ~~may~~

Mr. Chairman: It's time for a recess. I think it's time, too, that perhaps the committee got together. However, I'm looking again at our terms of reference and one of the first ones that we looked to ~~see~~ the Votes and Proceedings of the House of May 1 and it says "be appointed to examine and review the matter of and all the circumstances surrounding the

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agreement." Now it was the agreement that then, in our own references that we draw up, number one, are the terms of the agreement as they affect Ontario Hydro financially and economically sound?

Now, with those things in mind, it's perhaps difficult to say the financing is not a question, particularly when the financing was to be disclosed to Hydro in one of their requests.

Now, you have some thoughts, Mr. Renwick, you realize the problems involved here. We certainly must not cut off if it is pertinent. If it is not pertinent, then is there any point in examining it?

We will recess as soon as I have a brief word from ~~the~~ Mr. Moog.

Mr. Moog: Thank you very much, Mr. Chairman, ^{summer} I'm trying to just help everybody here to have some holidays, and maybe I can just assist Mr. Bullbrook's questioning and also Mr. Shibley's. I have already said that we do not have as high a rate as eight and a half to nine percent. The agreement itself provides that if my rate is below eight per cent, Hydro will get the full benefit of it. Perhaps that is enough for this committee to assess what has happened in the deal.

Mr. Bullbrook: I won't respond to that.

Mr. Chairman: All right, we'll recess for 15 minutes.

Mr. Henderson: Mr. Chairman, before you recess ~~and~~

Mr. Chairman: Yes, Mr. Henderson?

Mr. Henderson: I would like us to think of Exhibit 69

in that - I maybe didn't need to say that in view of Mr. Moog's words at the moment - ~~that~~ that does ascertain that the eight per cent - the \$4.92 ~~per~~

Mr. Genest: Well, ~~Mr. Moog~~ I don't want you to be misled. I'm instructed that the sentence "It is likely that the composite financing cost to Canada Square will be

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nearer to eight per cent than the originally quoted seven per cent" is an educated guess by Mr. Mink and is not information obtained from Canada Square.

Mr. Moog: Thank you, Mr. Genest.

Mr. Henderson: I realize that but I also realize that farther on in that paragraph it states that the \$4.92 figure is firm.

Mr. Genest: That's right.

Mr. Henderson: On an eight per cent.

Mr. R.G. Hodgson: Mr. Chairman, we do have to know in the end whether the rate is eight per cent or less

Mr. Bullbrook: No, no.

Mr. R.G. Hodgson: We do have to know that because we have to have that for the assessment of the Hydro deal.

Mr. Genest: No, you don't.

Mr. Moog: It's very good at any rate.

Mr. ^{Henderson}~~Henderson~~: We have to know whether they have a ~~loss~~

Mr. Chairman: Let's recess for 15 minutes.

H-1469 to follow

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The committee resumed at 11:50 a.m.

Mr. Chairman: As chairman I'm going to make a suggestion which may not be very acceptable to all of you, but which appears to me to be a possible way out of this. As I mentioned a little while earlier, we all have a duty to the public. We also have a duty to the individual. I understand from speaking to Mr. Moog in the recess - and it was not an in camera meeting I had with ~~you~~^{him} - but he made a suggestion that he has nothing to hide on this and will be happy to tell the committee everything about the financing. But that although he has a commitment at the present time and in that sense that it is firm, I gather that there are possibilities in the legal arrangement that that could be altered or changed if certain things happen.

Mr. Moog: Publicly I would not admit that, Mr. Chairman.

Mr. Chairman: Well, all right. Again, it is awfully difficult. But that it being a legal document that there are some legal provisions in there. And ~~at~~ that if this rate at this time becomes known, that it might be awkward.

Now, if the rate became known and as a result was changed, then Mr. Moog would suffer. But also the people of the Province of Ontario ^{I understand} would suffer, because the rate would be different. Now that may or may not be so -

~~Mr. Chairman: (inaudible)~~

Mr. Chairman: Well, I understand that if savings are affected, that the people of Ontario will get some of those savings. That was my reference. But, in any event, with that in mind I am going to suggest an in camera meeting. I don't know, I haven't discussed this. It's the idea that I myself have formed. I haven't discussed it with anybody - ~~not~~ not even Mr. Shibley, but it seems to me that it may be one way over this piece of evidence. Now, what is the reaction from the committee

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members? Mr. Allan, you have your ~~worried~~ worried look on - it bothers me.

Mr. Allan: Well, Mr. Chairman, I don't like meetings in camera. And I'm free to say, I think maybe I should say this now, that I haven't an understanding in my own mind as to why we're seeking some of the information that we're seeking. To me the important figure in this whole affair is the \$4.92, the cost per square foot for the rental of this building. And if, when we come to consider that figure, then I think is the time we decide - at least it would seem to me that is the time, when we go into the details of some of the things that made up that figure. I think of experience in calling contracts or asking for proposals and the decision is made upon the basis of the proposal that was the best proposal. And I think before we ~~could decide.....~~

Tape H 1470 follows

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(Mr. Allan)

.....~~made on the basis of the proposal that was the best proposal~~. I think before we could decide whether that was the best proposal we would look into those proposals and, in view of the statement by Mr. Moog that that figure was firm, the \$4.92 was firm. I can't seem to understand why we're so concerned about this particular interest rate. I would much prefer to leave the interest rate in abeyance and not have the session in camera.

Mr. Chairmah: ~~Thank~~ Thank you, Mr. Walker. Mr. Henderson.

Mr. Henderson: Mr. Chairman, I appreciate the remarks of Mr. Allan and I refer to the \$4.92 also being a firm rate but I want to make it quite clear that I am convinced, in my own mind, that at this moment the interest rate doesn't have a bearing on the hearing. To me, with ~~that~~ that \$4.92 firm figure, I believe in the confidentiality of the company and ~~it~~ leaving it secure and except that the counsel for the committee can show reasons why the interest rate is relevant at the ~~present~~ moment, I would have to oppose, Mr. Chairman, any moves - ~~(Mr. Renwick: Oh, sorry.)~~

Mr. Renwick: Oh, sorry.

Mr. Henderson: Mr. Renwick would like to cut me off but I'll accept that. We understand that. I would oppose any moves that would be to force this interest rate and I want to leave that on the records.

Mr. ~~Renwick~~ Chairman: Mr. Gaunt.

Mr. Gaunt: Mr. Chairman, I just wanted to make a comment or two about the terms and the matters with which we were set out to deal^t, that is to say, the six points of reference that we established as a committee to inquire into. The very first one is, "Are the terms of the agreement, as they affect Ontario Hydro, financially and economically sound?" The second point, "Does the agreement provide benefits and ~~a~~ advantages which justify the decision to abandon previous plans for construction of a building owned and financed by Ontario Hydro?"

Now, it seems to me that those two items with which this committee has to deal, it's two among six, is vitally affected by

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(Mr. Gaunt)

the interest rate.

Mr. Walker: Not when you have a fixed figure.

Mr. Gaunt: Let me explain now. The interest rate is a vital part, in my view, of the consideration of those two points. I'll tell you why. Because the interest rate, if it is lower, and Mr. Moog will correct me if I'm wrong, if it is lower than eight per cent, Hydro will derive the entire benefit.

Mr. Finlayson: Three ~~xxx~~ quarters.

Mr. Gaunt: Or three quarters, I'm sorry.

Mr. Moog: Oh no, the entire benefit. The entire benefit financing portion of ~~the \$4.92 rate~~ the \$4.92 rate. You see, the \$4.92 rate is a blended rate which includes maintenance and everything else. Whatever is applicable for ~~amortization~~ amortization out of the \$4.92 the entire - I think there is a figure mentioned of around \$3 and something. Whatever portion ^{if} ~~is~~ the interest rate is lower will reduce that figure. Are you with me?

Mr. Gaunt: Yes.

Mr. Moog: It's a direct complete saving to Ontario Hydro.

Mr. Gaunt: All right, so that just reaffirms my point that that knowledge we have to have in order to make the judgement as to whether the agreement was provident for Hydro.

Mr. Moog: It is in any event, Mr. Gaunt, and I can prove that to you. I'll be glad to.

Mr. Gaunt: The responsibility of the committee is to establish that fact.

(Tape H-1471 follows)

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(Mr. Gaunt)

~~the responsibility of the committee is to establish that fact.~~

Mr. Moog: I ~~agree with~~ ^{opposite} what you are saying.

Mr. Gaunt: So that our ~~responsibilities~~ responsibilities are to delve into those matters to satisfy ourselves that this is, in fact, so. Now, going beyond that, I was struck with the comment that Mr. Moog made just before we recessed, and he indicated, I think, that if he now has to take on financing at a higher rate of interest, then it would put Canada Square in the position where they might have to cut corners. I think that was the expression used.

Mr. Moog: Right.

Mr. Gaunt: And my understanding of the agreement ~~that~~ is that no matter what rate the financing comes in at, you have guaranteed Hydro the same quality building at the same rental rate.

Mr. ~~Gaunt~~ ^{Moog}: Exactly, Mr. Gaunt, and I may just enlarge on that? At the moment, in my opinion, Hydro is getting more than they bargained for.

Mr. Chairman: Well, I think, Mr. Moog, if you will just keep your comments quiet at this point.

Mr. ~~Gaunt~~ ^{Gaunt}: ~~So~~ So that my point now is that one of our responsibilities will be to see that corners are not cut, or if they were to find out where, and that is why we have to have the interest rate. I think whether it is done in camera, and I don't have the particular hang-ups, if I may say so, that Mr. Allan has with respect to meeting in camera; I really have no strong ~~mis~~ feelings either way. I think that if we can meet in camera and sort the matter ~~at~~ out at that point, then that is fine. It is a pragmatic solution to a very difficult problem and if that is the only way it can be done, fine. At the same time I suggest that Hydro is a public body and their dealings ultimately have to be public.

Mr. Chairman: Well, I think the key word there is "ultimately".

Mr. Gaunt.

Mr. Deans: Mr. Chairman.

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Mr. Chairman: Yes, Mr. Deans.

Mr. Deans: Thank you. I am in a quandary.

Mr. Henderson: That is not unusual.

Mr. Deans: Well, it is only unusual from the fact that I have more of the evidence available to me.

Mr. W. Hodgson: That in-camera meeting must have helped!

Mr. Deans: I didn't ~~ja~~ have an in-camera meeting.

The problem that I see is this: I am trying to anticipate what the committee is likely to do. That is my difficulty and I listened to Mr. Henderson ^(and I listened to) ~~and I listened to~~ Mr. Allan ~~and~~ I couldn't help but hear the comments of my colleagues to the right and I am worried that we are not going to pursue the matter at all, ^A and that we might, in fact, decide that it isn't a matter that is relevant to the decision of the committee ~~and~~ and, therefore, we will not have it as a matter of - as part of the evidence for our consideration, if and when we get to the point of writing the report. ^A And that is what has worried me. It is obvious to me from the evidence that I have heard that Hydro put a lot of stock in the interest rate, that it was one of the prime considerations of Hydro, when they were discussing themselves internally, the advisability of not only going this route for the development, but whether or not they might consider self-financing or whether they might consider alternative ways of developing their development. If we decide as a committee not to pursue this any further, and that is what the decision is going to be, then we are truncating the evidence to the point where we won't have sufficient evidence to come to a sensible conclusion about Hydro's decision. ^A And I don't want to do that. I think that it would be wrong if we decided right here and now that to know the interest rate, for the committee to know the interest rate, was undesirable. I think that in fact the committee has to have all of the information, every shred of it, ~~and~~ and I think that in order to understand it fully, we have got to give the counsel the opportunity to explain to us, through his questioning, what it is that he is pursuing.

Tape H 1472 follows

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~~...that in order to understand it fully we've got to give the counsel the opportunity to explain to us through his questioning what it is that he is pursuing.~~ I don't like in camera meetings either, but I also want to say on behalf - not on behalf of Mr. Moog - I don't need to speak on behalf of Mr. Moog, but I want to say in regard to Mr. Moog that I'm always aware of the problem that we might create, I don't know that we would, I'm worried that we might and that's my consideration.

I usually speak much better than ~~this~~ ^{this} but I'm trying to understand what it is that's bothering me. I don't - I will be prepared, subject to the remaining members discussion, to have the committee meet in camera for the purpose only of pursuing that matter, rather than risk the alternatives. And the alternatives to my way of thinking are that we don't pursue it at all, which makes the evidence incomplete, or that we pursue it in public and we do irreparable damage, which I'm not at all sure about, to Mr. Moog's financial arrangements and thereby irreparable damage to Ontario Hydro, and through them, to the people of the province.

I think that we have to be sure that we have it all and therefore I will meet in camera ⁱⁿ spite of my grave reservations about it, I'll tell you.

Mr. Allan: Mr. Chairman, I wonder if I could just endeavour to create perhaps a little better understanding of what I said. My thought - the thought behind what I said, was that when we come to the stage in our deliberations when we are preparing to meet the report, my suggestion was that we don't ask for this information now, but I was firmly of the opinion that if we need it later on, we ask for it.

Mr. Deans: Well, if I may, Mr. Chairman, I the problem I think Mr. Allan, is this; I'm not sufficiently expert to decide when we need the information and therefore I have to sort of rely on Mr. Shibley and the way in which he

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set out his pursuing of the evidence to determine that and because of that I have to assume that upon getting the figure that he has asked for and having it made known to the committee that he is going to pursue that further, it's not just a matter of getting the figure and stuffing it away ~~some~~ someplace ~~on the~~

Mr. Allan: I was trying to choose between two evils.

Mr. Deans: Yes, well, you've got to understand, so am I, and therefore I think that on balance I believe that the pursuing of the interest rate is relevant. I think it's well within the terms of ~~the~~ reference of the committee and I want to lay that to rest. I think that the terms set out by this committee clearly give us the authority to require the information to be made available to us, and I think that they ~~are~~ are relevant to the ^{if} termination of the circumstances surrounding the agreement.

I don't want anybody to misunderstand that, but I, also bearing in mind the conversation that we had yesterday, surrounding Mr. Justice McRuer's statements, have to consider whether or not that evidence would be prejudicial to Mr. Moog personally and I don't know if it would.

Mr. Chairman: ~~The point~~ is right there, Mr. Deans, I agree.

Mr. Deans: I don't know if it would or not but because I don't know if it would and because I suspect that it might, bearing in mind what has been said, I will meet in camera for those reasons. I can't think of anything else.

Mr. Chairman: The interest rate is relevant to our investigation I feel. Now, whether at this point it should be made public is another matter.

Mr. Deans: I speak only for myself.

Mr. Chairman: That's right.

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Mr. Deans: Mr. Renwick may not share

Mr. Chairman: Mr. Renwick I know wants to speak

and one or two others as well. Mr. Renwick.

Mr. Renwick: How did you know I wanted to speak?

Mr. Chairman: Well, I had your name down here some time ago.

Mr. Renwick: Oh, I thought perhaps you were operating on precedent.

Mr. Chairman: No. No, I am operating because I thought I got the sign from you a few minutes ago.

Mr. Henderson: He thought you wanted to report that in camera session.

Mr. Renwick: He got the sign when I took the microphone from my colleague.

Mr. Henderson: He thought you wanted to report that in camera session.

Mr. Renwick: I want to state carefully my concern about the matter and the brief conversation I had with counsel for the committee and with counsel for Hydro in the recess confirmed my view of this matter.

~~I'd like to point out to the members of the committee~~
that

H=1473 to follow

(Mr. Renwick)

I'd like to point out to the members of the committee that if we were simply reviewing the providency or improvidency of the contractual arrangement with Hydro for the building of its head office, I don't think there would be a select committee sitting for that purpose. It might, in certain circumstances, warrant that.

Mr. Gaunt: I hope I didn't leave that impression?

Mr. Renwick: No, you didn't. I'm not responding to comments which have been made. I'm expressing my view on it, and I'm not attempting to rebut or comment on anything that any other member has said. The words in the resolution establishing the select committee, "To examine and review the matter of and the circumstances surrounding the agreement for the construction of the new head office." I wish to say to the committee, to recall to their attention, that the leader of the New Democratic Party moved the amendment of the resolution in the House to include the terms "and the circumstances surrounding the agreement". The leader of the New Democratic Party moved that amendment because I asked him if he would move the amendment. The reason I asked him to move the amendment was that the, if I could use a Latin term, *causa causans*, or, perhaps, the inadequate English equivalent, the precipitating cause, of the committee, was the decision of the Premier. ~~and~~ I'm speaking to the members of the assembly and to others in the audience who may have been in the House at that time. In the time in which I have been in the Legislature with Premier Davis, both as Premier and before, I have never seen him more agitated or concerned or upset. And that's the reason the select committee is sitting. He was indignant, upset, concerned and worried about the integrity of his government. I have said this and other members have disputed that that's what is involved. On the question of the threat. And that's why we are basically sitting here. I want

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to make that point perfectly clear to my colleagues, particularly my colleagues from the Conservative Party. It was because of that that I asked that the words be inserted in the amendment, which the leader of the New Democratic Party moved.

We are now at a point in time where the full connotation of our terms of reference, not as isolated compartments, but the whole of the committee's preoccupation, which has, for convenient purposes, been divided into five specific issues, but all of one part. And if I may refer to my friend, Mr. Pierre Genest, in light of a brief remark we had yesterday, referred to a philosopher ~~xxxx~~ by the name of Henri Bergson; he quite clearly indicated that a

Mr. Genest: Henri.

Mr. Renwick: Henri. He quite clearly indicated that by putting together all of the isolated parts, you ~~don't~~ don't necessarily get the whole, but it requires another perspective in order to put the parts together and then get the whole. And that's what we have to do when we're finally finished.

I'm going to make this point also: when we look at the end of this committee's deliberations and the report, we're not going to be in this kind of a situation where we're going to be allowed to make some fatuous conclusions. We're not going to be in a position where we are going to be able to say that the evidence is inconclusive. We are going, specifically, to have to individually to the extent that the reputations of any person has been involved before this committee we are going to have to specifically, for whatever it's worth, give them a clean bill of health.....

Tape H 1474 follows

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(Mr. Renwick)

.....person has been involved before this committee we are going to have to, specifically, for whatever it's worth, give them a clean bill of health if they deserve a clean bill of health and not a clean bill of health some other way. We're not going to be allowed the luxury of fatuous recommendations which will disappear into history.

Having said that, we are back as, and from my knowledge of the financial industry, I understand the sensitivity of the interest rate question until all of the 'i's' are dotted and the 't's' are ~~xxxx~~ crossed and the documents are signed and all the rest of it. I understand all that and I understand the legitimate sensitivity in normal financing circumstances for that kind of concern. There is no question in my mind as to the relevancy of the item under consideration as there will probably be other items in connection with this which will be subject to the same kind of discussion. On the other hand, I am not interested in meeting in camera to receive evidence.

I stated my views yesterday on the record and I am not going to repeat those. As I take it, the question at the moment is whether or not the committee^d interest rate, which Mr. Shibley is aware of, needs, at this point, to be made public. Again, in the interests of ~~xxx~~ trying to buy a little bit of time, I am quite prepared to have exhibited to me, on a sheet of paper by the clerk of the committee, or by the chairman, or by the counsel, a slip of paper which informs me, in private as an individual member of this committee, of that rate, so that each member of this committee knows what that rate is. We don't then have to meet in camera for that purpose in the sense of generating discussion as we undoubtedly will about it but it will then allow - and I don't know whether this ~~xxx~~ will meet counsel's requirement at all and again I only put it forward as a suggestion - I can endeavour, so far as I am, to give my commitment, of course, that it will be private and confidential to me as I assume it would be to each member of the committee, without any undertaking that

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at the appropriate point in time that it may very well have to become part of the public record.

~~The question~~, This is my thinking about the matter, I am not now in a position to know whether or not that kind of solution, or suggestion, would meet counsel's requirement insofar as him questioning Mr. Moog is concerned because that would mean that all members of the committee would know at this time. We wouldn't be meeting in camera in the sense that we would generate wonderment about what the hell we had discussed in camera which I want to avoid. Certainly Mr. Moog knows, and certainly Mr. Moog's counsel knows, and if that's possible that's the only solution that I see to the problem. But I come back to my original remarks and that is that, if it were compartmentalized as to whether Hydro got a good deal regardless of the way in which they went about it I wouldn't be spending the summer here. We are talking about the integrity of the government which I think I share with the Premier of the province and with all the members of this committee. That's why I think the matter ~~is~~ is relevant. I think we have got to know it. I think the line of questioning which Mr. Shibley is pursuing ~~is~~ has got to be pursued. There will undoubtedly be two or three other items as I foresee it.....

(Tape H-1475 follows)

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(Mr. Renwick)

~~the question has not to be pursued and there will undoubtedly be~~
~~two or three other items as I foresee it,~~ where we are going to
be faced with the same problem.

Mr. Chairman: Thank you, Mr. Renwick, your suggestion is helpful. I wanted to speak to Mr. Deans when he was speaking, just to ask him a question. He said that if they did go into, if we did go into an "in camera" meeting, it would be strictly to look at the interest rate.

The other question I thought we might at that time ask Mr. Shibley, to tell us why in his mind it is important that he pursue this, and maybe that is one of the things you specifically did not want to do. Is that right? And I would like to hear from you on that too, Mr. Renwick. But Mr. Deans was limiting it to this one factor and some of the members have raised the question of why is ~~it~~ this important. Now, if we ask Mr. Shibley to lay on the table now why it's important it may destroy some of his purpose. If we could examine that, or ask him to tell us that, in camera, that may be important. It could be helpful.

Mr. Deans: Mr. ~~Chairman~~ Chairman, my major concern was that we would, if we went into camera, never get back out again. To be quite frank with you, it's so easy to say that having once gone that everything from there on in is a matter of delicacy that can't be dealt with publicly. And I had ~~thought~~ thought that if the interest rate as such ~~was~~ essential - if the knowledge of the interest rate as such was essential for the deliberations of the committee - and if we were to use it at some point in ~~the~~ determining the report that we were going to make, that it obviously would have to be part of a record some place, in order that it could be referred to by us. I didn't want to get in then and continue to pursue all of the line of questioning "in camera" simply because I don't know at what point you draw the line, and say "you've gone as far as you can." Therefore, I thought that perhaps, Mr. Shibley, if we were "in camera" for the purpose of determining the interest rate, leaving it to your judgement to tell us whether there were other matters that we should

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(Mr. Deans)

know at that point, and then to continue with the line of questioning publicly, with the knowledge that the committee was familiar, fully familiar, with the interest rate, that any reference to it would then be a reference to a rate which we knew but which Mr. Moog felt was somehow of some delicate nature. And it was that that I had in mind and nothing else.

Mr. Chairman: Mr. Renwick, you wanted to make comment on my other point?

Mr. Renwick: My comment, Mr. Chairman, is that I don't conceive that we can meet "in camera" and not ~~precipitate~~ precipitate further discussion about matters ~~with~~ which I think would be inimical to the successful outcome of ^{our} ~~the~~ deliberations, ^{want to} ~~or~~ make an obvious distinction.

Mr. Shibley's responsibility is not to pass judgement, draw conclusions, or otherwise. Mr. Shibley's responsibility at this point in time is to produce for us all of the evidence, not to leave questions unanswered, and that is what he is doing. That is what he has done throughout, and if we meet to ask him to explain to us the relevancy of the questions which he is asking, we are going to precipitate very difficult matters of internal concern within the committee.

If and when the time comes that we have to part company in decision-making, and I hope that time will not come, I don't want any meetings of ours to start that process now. The value of the committee, both now and in the future, as an instrument of the assembly, to do its job, requires what I think we have achieved to date. Now, that is paramount. If and when divisions have to come, and on my view of what has happened to date, there is no indication to me that I have to part company with any member of the committee. ~~There may be differences in purposes and differences of emphasis and so, but for God's sake, let us.~~

(Tape H-1476 follows)

~~There may be differences in nuances and~~
differences of emphasis and so on, but for God's sakes, let us keep
the unity of the committee and the confidence of counsel in his
ability to carry out the task which we have asked him to do, and
to keep that unanimity and unity of pursuit of what we are after.
I don't like sermonizing, Mr. Chairman, but I ask the committee
again; it may be considered to be just temporizing with an issue
and all the rest of it, but, please, exhibit to each one ~~xx~~ of us the
interest rate if that will not inhibit counsel in pursuing further
the questioning that he wishes to pursue.

Mr. Bullbrook: Well, before I make comment I was really --

because I think Mr. Renwick does make a point in connection with the attempt at unanimity, if at all possible, but I again don't want to fracture that unanimity. I tell you, Mr. Chairman, that I think I am bent towards such a fracture. I'd like to hear from some of the Conservative members, and I don't put it in that position, but I think really we recognize that, notwithstanding our objectivity as we hope we have, we do represent three political parties, ~~and~~ I'd like to really hear -- I have heard from Mr. Henderson and Mr. Allan -- I'd like to hear from the other members if they want to say something. If not I will go ahead.

Mr. W. Newman: Mr. Chairman, perhaps Mr. Shibley could

refresh my mind on the testimony given a few minutes ago by Mr. Moog about interest rates. I think he said it was below a certain figure and not above another figure, did he not, in his testimony? Were we not talking below 8 1/2 but not below 8? I am only going by memory. Maybe this did come out. Did it? ~~Would it~~ come out?

Mr. Shibley: I'd like to cut that part of it short.

Let me explain something to you. The interest rate as disclosed, if it is, is only a base from which I would continue to examine the witness because I want to elicit inferences from that rate referable to other questions. It doesn't serve my purpose to have

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PLG

(Mr. Shibley)

everyone on the committee seized of knowledge of the rates, ~~and~~ I am thereafter to be precluded from saying to the witness, "now having regard for that rate" and carry on with my line of questioning, ~~So~~ I don't see, ~~how~~ with all respect, Mr. Renwick, and I must say that you have a magnificent manner of very precisely stating the circumstances and proposing solutions to problems as they arise, but I don't in this instance see that the disclosure of that one individual item of evidence will enable me to develop the line of examination which I consider necessary for this committee to completely understand the transaction. Now, while I have the floor, so to speak, questions have been raised as to the relevancy of the rate itself, and beyond and above what Mr. Gaunt developed in his exchange with Mr. Moog, which I thought was a very valid point, there is this circumstance that the value of the building is a variable in terms of the amount of the \$4.92, which is invested in the construction of the building, and the amount of the \$4.92, which is the cost of money. That is the very reason why each contractor was required to submit his source and cost, and when Mr. Moog embarked upon a submission for this project, he understood by that specification that he was required to disclose that information, and the reason it is necessary is that, and bear in mind, throughout the documentation, Hydro repeatedly referenced the cost of money as being low in the sense that, of the ~~the~~ \$4.92 rate, much more of that over-all cost would be a balance available for the cost of construction of the building, and you can find documentation.

Tape H 1477 follows

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12.30 - 12.35 p.m.
M.R.

(Mr. Shibley)

~~... of the building and the cost of construction, there are~~
detailed schedules, but the fact of the matter is that the \$4.92 is a composite figure of the cost of construction, the cost of financing and the cost of design...

Mr. Bullbrook: And maintenance.

Mr. Shibley: ... and maintenance. And if, and the major element, every witness has been consistent, that the major element entering into that composite cost is the cost of financing. So by inference, if that cost is very high, less amount of that amount is available for the building and if it's very low then it's a circumstance which would be corroborative of what Mr. Moog has represented to Hydro throughout, namely that he is going to build them a better building for the same amount of money.

It cuts both ways. So you can't, Mr. Allan, with respect, just look at the \$4.92 and say that's all that governs. We must remember that that \$4.92 is a composite figure, one element of which was the cost of financing.

Now, Mr. Renwick has touched on another aspect of the relevancy of the evidence that I am engaged upon. I don't want to even make comment on that. It's not for me, as he has said quite correctly, to do otherwise than to develop all of the evidence. That has been my purpose to this date. I do not and have not ever intended to introduce any topic that was not, in my mind, probative, relevant to the issues that this committee will have to decide when it convenes to write its report.

I think I have proven that repeatedly and most recently in the face of an onslaught of suggestions that the content of that file was not relevant, when in fact, the relevancy of activities in November of 1971, the relevancy of - and it's probative, it's some evidence. You can reject any conclusion but again, I'm going to come back to May of 1972,

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(Mr. Shibley)

the fact that there was a meeting in May, other things happened in May. I think we have to understand that when I embark on these areas, I have never in the past and if anyone can point to an area that was unnecessarily covered, I'd like to know about it.

I think that to say to me you can disclose the interest rate privately and handcuff me beyond that, I might as well fold my brief. It just comes down to that. I might as well fold my brief in respect of this area of the inquiry and if you instruct me I am your servant. I am at the will of this committee but I want you to understand that I am only starting, I am not about to finish a particular area of inquiry referable to the funding of this building and what transpired in that respect and if you, as I say, instruct me, I will close the brief off in that respect and I'll get on to other things, like the bricks and mortar that went into the building.

Mr. Chairman: Mr. Shibley, what comment have you in regard to the suggestion that although the interest rate is firm, public revelation of it might make that ...

Mr. Shibley: I don't understand that really. I must tell you Mr. Chairman. I would like Mr. Moog to explain why disclosure of the rate of interest would adversely affect him and I pleaded ~~de~~ ignorance in this area but I'd be obliged him to ~~advises to~~ educate me.

Mr. W. Newman: Mr. Chairman, you asked for my comments ...

Mr. Chairman: Yes.

Mr. W. Newman: ...started out by a question and we kind of got sidetracked.

Mr. Chairman: I haven't forgotten Mr. Bullbrook either.

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M.R.

Mr. W. Newman: We were talking about ah in camera meeting, getting back to the topic in mind, I think the questioning went this morning ~~and~~ Mr. Shibley to Mr. Moog was "Was there a put-through deal with Swiss funds involved". and he said "No, no way at all," and repeated it and repeated it. Mr. Shibley continued to pursue this matter, left some doubts in my mind about the whole situation whether there was or there wasn't and as far as I'm concerned we are going to meet in camera I'd like to sit down to discuss that point for one thing and secondly the relevance of the position we were taking now and the probing we are doing, I really feel, Mr. ~~Chair~~ Chairman, and I'm not drawing any conclusions, that a great deal of the questioning and evidence, and I know Mr. Shibley is doing a very thorough job, may not be relevant. I think if we are going to meet in camera we should decide whether it's relevant. If it is relevant the interest rate will come out at that time, but ~~certainly this morning there was a great deal of doubt left in my mind after...~~

H-1478 to follow

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12.35-12.40 p.m/
E.M.

H-1478-1

(Mr. Newman)

~~and I know Mr. Shibley is doing a very thorough job, may not be relevant, and I think if we are going to meet in camera we should decide whether it is relevant. If it is relevant, the interest rate will come out at that time.~~

But certainly there was a great deal of ~~doubt~~
~~doubt~~ ^{after Mr. ~~Wong~~ said definitely} left in my mind ^{there was no Swiss money involved, there ~~would~~}
~~is~~ no put-through deal and repeated it. Mr. Shibley has
pursued it and ^{had} ~~it~~ left doubts in my mind.

Mr. Shibley: Mr. Newman, Mr. Chairman, may I ask a
~~am~~ simple question? I put this to you: We have over the ~~course~~
of many weeks of evidence had witnesses give "yes" and "no"
answers to many questions, which "yes" and "no" answers ^{have,} ~~by~~
subsequent examination of the self-same witness or other
^{was} witnesses ~~proved~~ to be incorrect - and I am not suggesting that
there was intentional misstatement, but I have been put to
testing evidence repeatedly. If all that was intended here
was for me to elicit a simple "yes" or "no" without testing
the witness by ~~confrontation~~ confrontation with other evidence,
other documents, collateral circumstances, to satisfy the
committee as to the correctness of the evidence, then again that
is a mode of proceeding that is foreign to me. My training
is all to the contrary. When I am conducting an investigative
examination of a witness, I can't stop simply with a "yes" or
"no", I must put that "yes" or "no" to the test of whatever
material is available to me with which to test it. Hopefully -
and I am always hopeful ~~at~~ that what the witness has said can
be confirmed, even in the face of that testimony. But often,
as has happened in this very inquiry, it has not been so.

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Mr. Chairman: Mr. Bullbrook?

Mr. R. G. Hodgson: Mr. Chairman, Mr. Bullbrook

will ~~wait~~ ^{wait} to wait until some of the Conservative members have spoken

Mr. Chairman, ~~again~~ I am in a quandary. Again I can't really see from what has been said what we would achieve by an in-camera meeting. However, I would want to reserve the right that I feel ~~that~~ at any time to object and to stop such in camera meeting if I think we are getting off track. I don't really see what we are going to explore, it hasn't been told to me yet what we are going to explore in such an in camera meeting, and that concerns me.

The other thing that I am very much concerned with - and I have a feeling for the firm here and what they are objecting to - and really I can only draw one sort of comparison which I might say to you it seems to me that we are heading into. You know, the Coca Cola Company have a formula that has been very successful and has led to their success, but that ~~doesn't~~ stop them selling the syrup wherever the country and wherever it is in the world that makes up the Coca Cola. And it seems to me that we are quite often touching very closely in examination on the contents of that formula. So what happens here is in the financial world ^{as} has been explained, ^{and} I feel that it has been explained to me, the concern of the Canada Square Corporation in this regard. And it is a very touchy sort of area, I can well appreciate, because the methods of this firm that have made it successful appear to be, from what I have heard in the evidence so far, the very thing that has allowed them to be successful. And to bring that out in public makes it available to anyone else and so on, and I believe that is an individual right that I don't want to tread

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H-1478-3

(Mr.R.G.Hodgson)

on in this inquiry. I understand this is not an accusatory
~~from~~ forum; I also understand that we have terms of reference
which almost predetermine what we have to examine.

We set up a certain amount of questions on ourselves
and, No.1, ~~at~~ this instance seems very pertinent to me; I am
~~prepared to go into a~~

(Tape H-1479 follows)

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12:40 - 12:45 am
M.S.

H 1479 - 1

(Mr. R.G. Hodgson)

~~very pertinent to me, and I~~ prepared to go into an in-camera meeting, but, Mr. Chairman, I would like you to perhaps define what we're going to examine and how far we might go before I would vote yes or no, if that was required. Because I do feel that's very pertinent to my understanding and how I would decide at that moment.

Mr. Chairman: Well, in view of what Mr. Shibley said in regard to the answer to my first question, which was the in-camera to review the interest rate and maybe ask a few questions about that interest rate, but he says he wants to use it further, so then I would come back to the second point, namely, that we should inquire as to his intent and purpose. Now, I know that some of the members are not satisfied on that, and that would be the other point. Then, having perhaps learned the interest rate, Mr. Moog's reasons for the confidentiality and Mr. Shibley's purpose in pursuing this line of questioning, then I would assume we would come back into our public meeting.

Mr. R.G. Hodgson: *You see, Sir, I meant in the end.*
~~(first few words inaud.)~~ The determination of this committee will definitely reflect whatever we decide on those two subjects in camera. Now, whether that -- perhaps it would be sufficient, for ~~instance~~ instance, if Canada Square had signed the deal in the meantime and it was a firm situation before we report, but if they are still in ~~abeyance~~ abeyance and we're required to report, we could still do the damage.

Mr. Chairman: Well, I don't know whether our report would need to include the interest rate or not. We might say it was a good deal, a bad deal, a terrible deal, or whatever it might be.

Mr. R.G. Hodgson: I don't see how you'll get away with it.

Mr. Chairman: Without basing it? Well, all right. I

(Mr. Chairman)

realize that's a possibility. I assume that maybe it would be firm before a report would be delivered. Have you heard from enough members of the Conservatives, Mr. Bullbrook?

Mr. Bullbrook: ~~YES~~ Yes. Are you prepared to give me about 10 minutes? I don't whether you want to break for lunch now.

Mr. Chairman: No. I don't know who else ~~wam~~ wants to talk. Most of them have spoken at least once.


Mr. Bullbrook: I didn't intend to wind up, believe me. It's just that I was very, very concerned that I understood the position of the government members in connection with this because I have a tendency, which has been manifest throughout this, of making up my mind in rather hurried fashion, at times. I attribute that, I suppose, at a self-serving comment that I hope I'm able to get to the point with some alacrity.

Now, I want to say to you, sir, this: The issue is joined. The issue was joined yesterday and we've put it off. The issue is joined right now. The issue was joined when Mr. Finlayson directed his witness not to answer the question. Now, I temper that by ~~saying~~ saying this: That as to the question whether the rate of interest is absolutely necessary in developing the question of the put-through causes me some concern, but most respectfully to Mr. Allan and to all of you, the issue is ~~joined~~ joined now. We have to have that rate of interest. There is no possibility in the world of rationalizing our responsibility otherwise. I'm not going to, again, go over unduly Mr. Shibley's remarks, but I want to tell you that it's not a question of under our terms of reference of dealing with the circumstances surrounding the agreement. It's the agreement itself we're dealing with and the rate of interest is absolutely essential to our knowledge in evaluating the agreement. And I refer to you, gentlemen, the letter of October 18, 1972, ~~being~~ an appendage to Exhibit No. 2, that develops a formula therein that relates to

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M.S.

(Mr. Bullbrook)

the appraised value of the building. ~~And~~ I'm going to tell you now that if you don't think the word "appraised value" is going to be important in this hearing, you've missed the point entirely. And I say that respectfully. You cannot. I absolutely adjure you not to rely on the rate of \$4.92. That happens to be what Hydro will pay, but that doesn't happen to tell you whether they're getting their money's worth. And the formula that's established makes it incumbent upon Hydro and the developer to ~~xxxx~~ assess the appraised value of this building. ~~And~~ I tell you without equivocation, without reservation, without fear of contradiction, nobody can appraise the value of that building without knowing ~~the rate of interest of the financing.....~~



Tape H 1489 follows

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12.45 to 12.50 pm
fvk

(Mr. Bullbrook)

~~... nobody can appreciate the value of the building without~~

knowing the rate of interest that the financing is effected at. It's an absolute essential. I harken back to Mr. Tatham's evidence but I don't have to harken back because the cost of the building is one thing. The value of the building is another thing.

That being said, I want to deal with Mr. Renwick's comments. I don't ever, and I want Mr. Renwick to know this, I don't ever regard anything that he says as sermonizing in any way. As counsel has said, he has a magnificent ability, not only to recall evidence, but to direct us as to our purpose. I want to say, however, and I don't mean to be facetious, that he reminded me of a case I had about six years ago when I was defending a fellow for armed robbery. After the evidence was in, the judge spent an hour and a half in totally exculpatory remarks creating an aura of absolute confidence in me and, in the last sentence, he found him guilty and gave him four years in jail. I want to say that the only distinction that I find in retrospect is that you find the defendant not guilty but you still give him the four years. The point being, Mr. Renwick, we have joined issue on this matter.

Mr. Renwick: I agree. Mr. Shibley gave me the answer.

Mr. Bullbrook: I know you do agree. I know exactly.

And I don't want to fracture unanimity but, the fact of the matter is, someday we're going to have ~~the~~ to have the rate of interest.

Mr. Shibley said it would be to our advantage at the present time. I suggest to you, there is no purpose in putting it off. As far as ~~the~~ an in camera session, I say again most respectfully, that we just cannot receive this evidence in camera. It has ~~to~~ to be germane to the writing of our report and it's very tacit that if we receive it in camera ~~is~~ it's of a confidential¹ nature. We've come to the position now, sir, that we must undertake our obligation. In closing, I want to say this. I recognize ~~the~~ full well that the expertise of Canada Square is one that they wish to have ~~unique~~ unique to themselves and, part of that expertise is their financial dealing, and the obvious genius of Mr. Moog is the ~~best~~ head of that

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12.45 to 12.50 pm
fvk

(Mr. Bullbrook)

corporation. But, sir, one of the considerations of Hydro in accepting Canada Square and, again, the evidence is replete with that, is the expertise of Canada Square and, the fact of the matter is, notwithstanding that I recognize that Mr. Moog and his corporation are extremely reticent, although I don't have any evidence as to actuality. They are extremely reticent to disclose that. It boils down to something * I've said three times and, I hope, I won't have to say again, and that is that that expertise now is endowed with a responsibility to the public of Ontario because they're dealing with a public emanation.

The Coca-Cola Corporation is not licensing the government of Canada to dispense their beverage and that's the basic distinction. When Mr. Moog deals with Loblaw Corporation he does so in the sanctity and privacy of, not only his own expertise, but the ^{non-existence} ~~right~~ of the ~~public~~ right of the public to say we demand to know, but we're entitled to know. And I suggest, sir, that the time is now that we say to Mr. Moog: "We're going to know."

Mr. Chairman: Thank you, Mr. Bullbrook. Any other comments? Mr. Shibley, I don't know whether you made general comments. You indicated you would have something to say. Do you feel that you have covered everything with your earlier comments?

Mr. Deans: Mr. Chairman, I just want to ask Mr. Shibley a question.

Mr. Chairman: Right. Mr. Deans.

Mr. Deans: I ~~is~~ just want to clearly understand. Mr. Shibley, when you say that if you - Let me put it another way. The gaining of the information with ~~the~~ regard to the rate of interest and the subsequent examination of the other matters related to that, are those both so intertwined as to require that they both take place in the same session? In other words, is it possible for the interest rate to be given in camera and the evidence to be then pursued without direct reference to it as a figure, or is it necessary that the entire matter be dealt with in one package?

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fvk

(Tape H-1481 follows)

~~to the figure; the figure itself if meaningful and that's,~~
of course, why I'm in need of having it in evidence. I am also in this position - bear this in mind with me - I have got a certain amount of raw material with which I work. Hydro have produced volumes of documents to me, ~~the~~ from which I've made my selection, and which from time to time I have gone back through, relative to new issues as they evolve. I have asked for the documentation of all of the developers; I have asked for statements from various people as to their knowledge of what transpired. When an issue is being developed by me, I take the whole of that raw material, distil it, and, if I think there is an issue which is material, direct my mind to the introduction of all such evidence from all those sources as I think are relevant thereto. And I have repeatedly asked everyone; ~~and~~ in fact, I think in the very first day of evidence I asked everyone and I said "it's too bad that we can't give you instruction as is given to a jury - please don't jump to conclusions just because a line of questions is lead, wait until the whole case is in."

Now, my difficulty in part, I might tell you, is that first, it is not my function to reach conclusions, except as to what the issues are, and what evidence there is in my hands. And secondly, the evidence, by way of raw material, that I am given is never complete. Again, that's without inferring anything. It's just not complete because other people do not see what I see in the collective effort that I make. So that when the witness is in the witness box, I must ask further questions to try to fill in blanks in my ~~book~~ ^{book}, and also to establish the record of evidence upon which you make findings.

To say to me, and I can tell you now it's not going to work because the interest rate is just one item. There are at least another half a dozen items about which we are going to run into similar complaint on behalf of Mr. Moog. And I don't want to spend - I think we've got perhaps a half hour of actual evidence in this ~~a~~ morning; we wasted a half a day yesterday and more time

July 26, 1973
12:50 - 12:55 pm
JLP

(Mr. Shanley)

earlier trying to get a file that was said to be irrelevant. I'm getting to the point where if this committee decides item by item, at the instance of an objection by counsel to Mr. Moog, as to whether or not that question or that item is relevant or not, whether it's too prejudicial or not, I just can't carry on, it's as simple as that. And I tell you right now, it is not an individual problem. If you are going to hold an "in camera" session, I would like to know what the terms of reference of that session is going to be also. And I'd like it to be made public what the terms of reference are because I'm concerned, I'm concerned; there's a rationale for public hearing; it precludes, if I may say so, it has an effect on what otherwise may be the attitude of those who are participating; that's the rationale for public hearing, in part at least.

I'm in sympathy with Mr. Moog in many respects, and I must tell you it would relieve me greatly of the continuing concern I have that in given areas I'm investigating, and it may lead to a conclusion favourable to him but cause him damage in the interim.

~~this is of course a no-win situation and it is a no-win situation~~

(Tape H-1482 follows)

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12:55-1:00 pm
PLG

(Mr. Shibley)

~~to him and to the committee in the hearing.~~ This is of concern to me, and I say that quite openly ^{to} Mr. Moog, but I think you have got to make up your mind that either you are going to hear the whole evidence in given areas, publicly, or in camera. I think we are going to be shuttling back and forth between in-camera hearings and public hearings, because as I tell you there is going to be at least half a dozen of these items come up and I am not prepared to comment further on the question of whether it should be in camera or not. That is not my sphere of responsibility and frankly I am not sufficiently astute as to the consequences of what emanates from an in-camera hearing to comment intelligently on it. I am going to leave that to the members of the committee who seem to be much more aware of those consequences. I don't much care myself how I create my record for this committee. I don't care whether I create it in camera if I could be assured that that kind of a hearing is going to be - will equate with the kind of hearing we ~~have~~ had in public. If I get that assurance from everyone here, then it doesn't concern me. I am only here to create a record of evidence upon which this committee can report, but if going into camera is going to mean that we are ~~not~~ not going to get the same kind of deliberation and I will put it on the table. If this committee goes into camera on any given line of questioning ^{and} there is division on party lines, then again it is a fruitless exercise. ^{and} I can't tell you what my expectations are in that respect because I have never had any experience with a select committee and I have never had any experience with dealing with any committee of ~~the~~ the Legislature in camera. You people will have to tell me.

Mr. Chairman: Mr. Finlayson:

Mr. Finlayson: Mr. Chairman, I just want to make three short statements. In the first place, it would appear to me that with respect to Mr. Shibley's concern about not being able to carry on a line of questioning when it ^{is} confidential information was disclosed, that that could all be answered by the matter being handled in camera. In other words, if we go into camera he can ~~have~~

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12:55-12:11 pm

PLG

(Mr. Finlayson)

follow up any pertinent line of questioning that prevails. Now

Now number two, and I want to make this very clear, that I ~~we~~ have never asked for a guarantee of a sealed record if we go into camera. I am quite aware that the committee can disclose all or part of what they learn, either in their report or even prior to that, and I am in no way suggesting that if they learn of information which I maintain is confidential and the witness maintains is confidential, but in the view of the committee once they have heard it, is ~~not~~ confidential, then I in no way suggest that this committee's hands have been tied by the fact that they went into committee.

Now the third thing is that Mr. Shibley talks about shuttling back and forth and ^{the} inconvenience that that would cause, I should only point out that as committee counsel he controls the calling of all of the ~~exam~~ witnesses and the areas in which they are to be questioned, and I don't see how they should be any major administrative problem in this area. He would know and if he doesn't know he can talk to me and I will tell him my views in advance, when he is going to be ~~exam~~ examining witnesses that I would object to their evidence being made public and when they are not, and I would also tell him what areas that I am concerned about, and it would simply be a question of administration. There is nothing entirely unique about in-camera sessions. I have been in hearings in the Supreme Court of Ontario where confidential information had to be disclosed and the judge ~~was~~ thought nothing of retiring

Tape H 1483 follows

July 26, 1973
1.00 - 105 p.m.
M.R.

(Mr. Finlayson)

~~... confidential information had been disclosed and the judge thought nothing of returning to his chambers with the shorthand reporter and counsel and questioning of the witness took place in there.~~ No one suggested that the judge's hands were tied by that and he was free to make the record public if he thought that the cry of confidentiality was overly strident. So those are all I have to say, Mr. Chairman. That is all I have to say.

Mr. Chairman: Thank you, very much.

Well, now it's one o'clock ^{and} I'm going to suggest that we leave this matter until after lunch unless somebody wants to make a motion now as to how we should go? I have no more suggestions to make *My own* →

Mr. Bullbrook: Could we do it in the fashion that you make a ruling now? I think really we should dispose of it before lunch hour, but if you feel that that is unfair to you, just say so, Mr. Chairman, if you prefer to have the lunch hour to deliberate. But rather than a motion, I would prefer that you make a ruling in connection with it because really that is your function and duty.

Mr. Chairman: Well, I certainly don't want to be accused of not carrying out my function or purpose here.

Mr. Bullbrook: We wouldn't.

Mr. Henderson: Mr. Chairman, I was pretty strong in my thoughts and I still am but I would appreciate an opportunity, during the lunch hour ^{to} again a little bit of information from the witness ~~for~~ confidentially.

Mr. Bullbrook: ~~inadvisable~~ *OK* →

Mr. Henderson: No, no. I want to - I may go along with you people ^(though it's against) ~~without~~ making it public.

Mr. Benwick: ^(It's his privilege) It's a free country. *He can talk to whom he wants to.*

Mr. Bullbrook: All right. Okay.

Mr. Henderson: I may go along with it.

Mr. Chairman: All right. Any other comment?

Mr. William Hodgson.

July 26, 1973
1.00 - 1.05 p.m.
M.R.

(Mr. Chairman)

Well we are adjourned until 2.30.

Mr. Bullbrook: Why 2.30? Why not 2.00?

We don't need an hour and a half for lunch.

Mr. Chairman: You don't need an hour and half?

Mr. Bullbrook: 2.00.

Mr. Chairman: All right, 2.00 o'clock.

The committee adjourned at 1.05 p.m.,

H-1484 to follow

APPEARANCES

Committee members:

J.N. Allan
J.E. Bullbrook
I. Deans
M. Gaunt
L.C. Henderson
R.G. Hodgson
W. Hodgson
J.P. MacBeth (Chairman)
W. Newman
J.A. Renwick
G.W. Walker

Clerk of the committee:

Paul Moore

Committee counsel:

R.E. Shibley, QC

Assistant to committee counsel:

J.P. Bell

Ontario Hydro counsel:

Pierre Genest, QC
James McCallum, QC

Canada Square counsel:

Douglas Laidlaw, QC
Blair Cowper-Smith
G.D. Finlayson, QC

President, Canada Square
Corp. Ltd.

Gerhard W. Moog

INDEX TO EXHIBITS

Ex. No.	Page	Description
189.	1454-1	Memo from Canada Square file, dated June 21, 1972, signed G.W.M.
190.	1459-2	Receipt for files received by R. E. Shibley from D.K. Laidlaw, Canada Square

not transcribed

Session 1973

LEGISLATURE OF ONTARIO

SELECT COMMITTEE

HYDRO HEADQUARTERS

Thursday, July 26, 1973.

Afternoon session

July 26, 1973
2.10-2.15 p.m.
M.F.

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LEGISLATURE OF ONTARIO
SELECT COMMITTEE - HYDRO HEADQUARTERS

The committee resumed at 2.10 o'clock p.m. in the members' board room.

~~Mr. Deans~~

Mr. Chairman: Ladies and gentlemen, I would draw the meeting to order again.

When we closed some one hour and 10 minutes ago, I was left with a problem. I was listening to what the members said in regard to my suggestion of having a meeting in camera for two purposes: First of all to find out why in Mr. Shibley's mind this was important, and secondly, to determine the interest rate and whether or not it could or should not be made public.

Listening to the members I decided that there was no consensus in favour of it and as a matter of fact probably the majority at that time thought otherwise, and in my discretion I had come to the conclusion that there was only one course that we should follow and that was to rely upon the advice and opinion of our counsel that the matter was important, and that we should follow the procedure set by him.

Now one or two have spoken to me since that and I gather that there is a change of mind on the parts of some people, but in any event so you will know what my decision was, it was that we should rely on the advice of the solicitor and follow that, but if someone wishes to make a motion to the contrary that we should go in camera or handle it in some other way, I am prepared for that motion.

Mr. Deans: Mr. Chairman, before you put the motion -----

Mr. Chairman: I don't have any motion.

Mr. Deans: Okay, you are making a -----

Mr. Chairman: Well I am saying that unless there is a motion what my decision is that we turn it back to our counsel and let him proceed.

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Mr. W. Newman: Mr. Chairman, in this connection, having checked over Hansard this morning it would indicate, and you know it is there I don't think we have to hide it, it would indicate that the interest rate was somewhere between eight and eight and a half per cent from the evidence given both from Hydro previously and some statements made by Mr. Moog this morning, could our counsel - and I did speak to him about this - could he live within that guideline without disclosing the actual interest rate? I would like to know that.

Mr. Chairman: Well I don't know whether he can live with it indefinitely, he may be able to live with it for a day or so, but, Mr. Shibley, you answer it.

Mr. Shibley: I don't think it is as simple a problem as that, Mr. Newman. I think I need to know and have recorded the precise rate and I must relate my further questioning to that rate.

Mr. Chairman: Well if there are no -----

Mr. W. Newman: Mr. Chairman, there is just one thing that does concern me. I don't like to see any company, and I don't care whether it is Canada Square or anybody else, come before this committee, and I think in fairness to Canada Square which is the ~~one~~ one under question at this point in time, I don't think it is fair if this is going to seriously ^{impinge} ~~impinge~~ on their future and present financing, that we shouldn't be disclosing these figures if it is going to create a serious hardship, and I would like to hear from Mr. Finlayson if he really feels it would be that detrimental to his company.

Mr. Bullbrook: It is obvious he feels that way and I respectfully say to you nothing further can define the issues. Mr. Finlayson has directed his witness not to give that evidence, he has supported it in temperate fashion just before our recess at noon.

May I suggest to Mr. Newman that if you really feel

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2.10-2.15 p.m.
M.F.

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(Mr. Bullbrook)

that the attitude of the Chairman is wrong that we have a motion, because really t_hat is what the Chairman is asking for if someone doesn't agree with what his intentions are that they put a motion, and there is nothing wrong with that. If you really sincerely feel that we should be sitting in camera, then I invite you, as one of your colleagues on this committee, to put the motion.

Mr. Chairman: Mr. Finlayson, I think, has certainly expressed his views very strongly and adamantly and as well as certainly Mr. Moog.

Mr. Walker: Mr. Shibley did invite M_r. Moog to make comment. I think Mr. Shibley concluded his remarks about ten to one by indicating ~~that~~ that this was an area in which he did not have a great knowledge, at least the question of the premature release of the information, and he did call ~~on~~ Mr. Moog to ~~comment~~.

Tape H 1485 follows

July 26/73

2:15 - 2:20 pm

C.B.

(Mr. Walker)

~~acknowledge at least the question of the premature release of the information~~, and he did call on Mr. Moog to make some comments. Now, Mr. Moog made no comments prior to the adjournment. Perhaps now would be an appropriate time to hear his opinion as to what would be the consequences of premature release.

Mr. Bullbrook: Mr. Chairman, I object strenuously to that. Surely to goodness ~~I~~ may I put it to you directly? for one moment, I couldn't possibly conceive that the position of Mr. Moog has altered, ~~but~~ he doesn't want to make the interest rate public, ~~and~~ the issue before ^{us} quite defined by the chairman is; ~~he~~ he is prepared now and his intention would be to rule that that interest rate be made public. However, he is to be guided by the wishes of the committee as to whether they wish to sit in camera or not. Is that not correct, Mr. Chairman?

Mr. Chairman: Well, yes ~~and~~.

Mr. Bullbrook: And you are inviting some member to make such a motion?

Mr. Chairman: Hand it back to Mr. Shibley.

Mr. W. Newman: Mr. Chairman, may I say, maybe some people had a better lunch than Mr. Bullbrook had and might like to make some further comments after reflection, that's all I was asking for.

Mr. Henderson: Mr. Chairman.

Mr. Chairman: Mr. Henderson.

Mr. Henderson: Mr. Chairman, in view of the remarks and the remarks before lunch, I ~~as~~ am still concerned with the confidentiality of this situation and I will move that the committee ~~will~~ go into camera.

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2:15 - 2:20 pm
C.B.

Mr. Chairman: Is there any discussion on the motion?

Mr. Deans: Yes, Mr. Chairman.

Mr. Chairman: Mr. Deans.

Mr. Deans: Mr. Chairman, I think I made it clear, I hope I did, the only reason why I would consider going into camera, and the only purpose that I would consider going into camera and I've asked Mr. Shibley whether or not he could conduct his hearing, or conduct his inquiry ^(E.S.) questioning, or line of questioning without divulging the actual figures once he had made those figures known to the committee.

I don't want to go into camera for the remainder of the financial discussions dealing with Canada Square, ~~and~~ I suspect that now that the relevance of the material is cleared up, and the committee seems ~~to~~ at least to understand that it is relevant, that the matter of going into camera without very clear guidelines as to what it is that we are going to discuss in camera is wrong. Just simply to go into camera and then to spend the remainder of the time there discussing all of the matters and following up on all of the line of questioning that Mr. Shibley might want to ~~to~~ pursue and the committee might want to pursue would not be desirable in my opinion.

I think if it was simply a matter of ^(the) disclosure of the rates and then to pursue the remainder of the line of questioning publicly then I would agree. But Mr. Shibley has indicated to me, in the committee, prior to the lunch break that he couldn't do that, ~~and~~ because of that I frankly think that the chairman's ruling was the correct ruling.

Mr. W. Hodgson: Mr. Chairman, I would like to ask, through you, to Mr. Shibley, and maybe he'll have to ask Mr. Moog to qualify this. I would think that if it was possible in a short period time that Canada Square complete their financial arrangements, why I'm sure ^(and) I'm asking Mr.

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C.B.

(Mr. W. Hodgson)

Shibley, that we have plenty of witnesses that we go on, rather than divulge at this time; ~~if~~ it is going to be a detriment to Canada Square, to Hydro and to the public of Ontario that the interest rate be divulged at this time. If this is not possible, well, I'm quite willing to go into camera and discuss the interest rate that they are going to — and is confidential; sometime, I think it has to come out. But maybe not as of today. If it is going to be some detriment, not only to Canada Square but this could be to all the people in the province of Ontario, if he's refused interest rate that he claims he has and it is something higher, why it is going to cost everybody a little more money.

Mr. Henderson: Mr. Chairman, could I add to my remarks in reply to Mr. Deans.?

Mr. Chairman: Let me just ask Mr. Finlayson just briefly. Is there any thought that this can be settled within the next 10 days to two weeks?


Mr. Finlayson: Why, I think that would be unrealistic to hope for that, Mr. Chairman. That is the execution of the bond purchase agreement, *you are referring to?*

Mr. Chairman: Well, can you put a time on it?

Mr. Finlayson: I can't. I can't.

Mr. Henderson: Mr. Chairman, may I add then, that it is my hopes that when you go into camera, that the representative of Canada Square will divulge to the committee members how this is going to damage his position. Following that, I would suggest to you as a committee, that we would ask Canada Square officials to leave the committee and then we would ask our counsel to inform the committee members of the

H1486 to follow



July 26, 1973
2.20 - 2.25 p.m.
M.R.

(Mr. Henderson)

~~... the committee and that we would ask our counsel to~~
~~inform the committee of the importance of it.~~

Would there be anything wrong with requesting that, sir?

Mr. Chairman: I see nothing wrong with it,
Mr. Henderson, it's the committee to decide, but ~~if~~ if you
are asking my personal opinion, I see nothing wrong with
that.

Mr. W. Newman: Mr. Chairman, may I ask,
through you to the counsel for Hydro, if they feel
disclosing of this rate would be detrimental to Hydro,
or could be detrimental to Hydro, should I say?

Mr. Chairman: I assume that's to you
Mr. Genest.

Mr. Henderson: Mr. Newman or Mr. Chairman,
I just wonder if Hydro might want to give a short brief
to the committee when they are in camera?

Mr. Chairman: Well, I would assume that in
camera would be the counsel, our clerk and all counsel
represented here. I'm looking at four and ~~one~~

Mr. Genest: Perhaps that might be dealt with
then if the committee is going to go that way.

Mr. Chairman: I don't know whether there are
any others that should be there if the motion is carried but
so there can be no question I would assume it would be - I
don't know what the story is with Hansard - I suppose Hansard
would not be there, would they? *Hansard would not be there.*

Mr. Deans: That's right. No, not in camera.

Mr. Chairman: Not in camera.

Mr. Deans: How can you possibly conduct a hearing
for the purpose of determining something without an official
record?

Mr. W. Newman: I think it's recorded and sealed
some way, Mr. Chairman.

Mr. Deans: That's right and obviously Hansard
has to be there to record whatever the decision of the committee is

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M.R.

(Mr. Deans)

if you happen to go in to camera.

Mr. Chairman: Well, all right, we'll - I'm ^{oppose} not trying to ~~oppose~~ a record being kept of it. I'm just thinking of the confidentiality, ^{it} it certainly wouldn't be treated in the same manner as the present Hansard, naturally.

We'll have to get perhaps further advice how that is done. Now, I've got two or three people trying to get my ear. Mr. Genest, I gather you would be there? ^{if you went in you might rather}

Mr. Genest: Well, if the committee is not going to go into camera...

Mr. Chairman: ~~also~~ reserve your remarks.

Mr. Genest: I merely want to say that in this respect we accept the judgement of Canada Square. We do - it is not in our interests, it is very much against our interest, to see the financing ~~agreement~~ arranged by Canada Square jeopardized in any way because that throws - it may avoid possible savings for us, it also throws us - it may throw us into a very difficult situation.

In that regard, we have an interest in supporting the position of Canada Square.

Mr. Bullbrook: I was wondering if I could ask Mr. Genest this question. No, I'm not going to because I want to get to the motion.

Mr. Chairman: Mr. Glen Hodgson.

Mr. R.G. Hodgson: Well, Mr. Chairman, it seems to me that we have been asking questions, we have been getting answers, and on that basis, when we go into camera I would like to have the first part of it in camera, with a committee member discussion with our counsel and after that, others present. Because quite frankly, what concerns me is I'd like to know the understanding in why our counsel wishes ^{this} and feels that this is a vital interest at this moment.

If there is some other way of proceeding, ^{that} ~~it~~ could be suggested to our counsel or discussed with him, I'd like to see that carried out.

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M.R.

(Mr. R.G. Hodgson)

Then after that, if the committee in camera decide we would have counsel for Hydro and counsel for Canada Square, but ^{I'd like} ~~for~~ the first part of our meeting dealt with as to our procedure and ~~our~~ proceeding and I'd like to then reserve my right to continue in camera, because it would be on that, having known more about the situation, that I would want to make a further judgement.

Mr. W. Hodgson: We would have to have both sides of the story though, wouldn't you?

Mr. Chairman: All right, you'll all have to vote accordingly as this comes up. Mr. Allan.

Mr. Allan: Mr. Chairman, in many ways I agree with Mr. Hodgson, Mr. Glen Hodgson. It would be my hope that if you go into camera, you don't go into camera with the thought of a hearing. You would go in only to obtain certain information.

Mr. Chairman: That was ^certainly my thought although ~~perhaps~~.

Mr. Henderson: I think I left that quite clear, did I not, Mr. Chairman?

Mr. Chairman: Yes, in my mind, ^{it was} ~~Mr.~~ Glen Hodgson that sort of put the thought on ^{Mr.} Shibley, depending on what Mr. Shibley says, we might say we want to stay in there for a little while, ~~as~~ that's what Mr. Deans feels. But I would like to come out and report to the world what we are doing in ~~any~~ any event.

Mr. Walker: Could you get a soundproof room?

Mr. Chairman: Mr. Allan, any other thoughts?

If not, any other member wish to speak?

Mr. Walker: Mr. Chairman, I have reluctantly come to the opinion that we should go in camera and it must be based on, as Mr. Deans indicated earlier, the references to McRuer, ~~we can't ignore~~.

H-1487-1

(Mr. Walker)

~~come to the opinion that we should go into camera, and that must~~
~~be based on,~~ as Mr. Deans indicated earlier, the references to
~~Member.~~ We can't ignore the fact that there may be a possible
damage to Canada Square and possibly to Hydro and possibly to the
public in the whole matter. And in view of that at least we
preserve our options if we go into camera, entertain the matters
as required and then make a decision at that time whether it is
necessary to make these public. That, I think, is the way to
handle it, Mr. Chairman, and I would support my colleague Mr. Henderson
in that matter.

Mr. Chairman: Yes, Mr. Renwick?

Mr. Renwick: Mr. Chairman, I always like to know what I
am voting on. The motion of Mr. Henderson was to go into camera.
I would like Mr. Henderson to outline to the committee what he
considers ~~xxxxx~~ we will discuss when we are in camera so that the
matters can be perfectly clear before we go into camera. I would
like it done in such a way that we can make a notation of them and
be perfectly clear that we understand what we are talking.... what I
am voting on when I vote either for or against this motion.

Mr. Walker: Just before.... Mr. Chairman, I wonder if
I could make a comment in that regard? We should define our terms
of reference for the period in camera, if we do go into camera, and
if the vote of the majority is to go into camera, and I agree in
that respect. But I am wondering if it would not be helpful for
Mr. Shibley to give us some idea of how, if we ~~we~~ do go in, on the
chance that we might go into camera, if we do go in, can he give
us an indication as to how far we should proceed with an in camera
hearing. I think it is difficult to call upon

Mr. Chairman: I think Mr. Shibley...

Mr. Walker: WE know what he wants to say... I know he is not
entirely in favour, but if he..

Mr. Chairman: I think that is unreasonable to ask him to
outline how far he thinks we should proceed in camera. ~~Max~~ You've
already indicated he doesn't think we should be in there.

H-1487-2

Mr. Walker: Lawyers always think in the alternative,

Mr. Renwick: Mr. Chairman, at the risk of insisting on

formality at this point in the proceeding, there is a motion before the assembly. It was a motion without reasons, embodied in the motion. It was a motion without any limitation. I am simply asking Mr. Henderson formally to declare specifically the purposes for which we are going into committee so that I know what I am voting on. I am not going ~~into~~ ^{into} ~~into~~ committee to have a cup of coffee with you, I like drinking my coffee in public. I want to know specifically what we are going to talk about in committee.

Mr. Chairman: I don't think you are obliged to enlarge upon your motion unless you want to Mr. Henderson, but you have the opportunity, and the request to do so.

Mr. Henderson: I don't intend to enlarge on the motion. But I would like to reply to one or two of the comments. Mr. Hodgson's suggestion that we decide then whether we continue in camera, and would like the counsel for committee to suggest some reasonings. The counsel has proven to me his reasons behind wanting to follow ~~this~~ this line of questioning is to exhaust all avenues. I would take that from counsel's suggestion. But I will just re-emphasize in a few short words, Mr. Renwick, first off, as I said, I would hope that we would give Canada Square the opportunity to tell the committee members the confidential part of this and their reasons for it. Following that I would hope that we would ask Canada Square to leave the room and we would let our solicitor tell us at that time, at that time we would decide what we would do. But it would be my hope that we could come back out into open session with a decision one way or the other. It is not my intentions to continue hearing evidence in camera, as far as official evidence. I would just hope we could get some of the confidential remarks.

Mr. Chairman: Any further discussion, if not...

Mr. Renwick: I consider Mr. Chairman, that totally unresponsive to my question. I'll oppose the motion to go into camera.

Mr. Chairman: All those in favour of the motion? ^{Six} All those opposed? Four. I declare the motion carried.

H-1487-3

Mr. ~~Renwick~~ Bullbrook: I would ask you to record the names of those voting in favour of the motion.

Mr. W. Hodgson: It's normal.

Mr. Chairman: No problem.

Mr. Bullbrook: I'm just asking. I don't know whether it is normal or not. We do things that are abnormal at times.

I would ask that you record the names of, and in the absence of such I would like to record the fact that I voted against the motion.

Mr. Chairman: I don't think there is any problem recording them.

The committee divided on Mr. Henderson's motion which was carried as follows:

AYES

J.N. Allan

L.C. Henderson

R.G. Hodgson

W. Hodgson

W. Newman

G.W. Walker

AYES- 6

NAYS

J.E. Bullbrook

I. Deans

M. Gaunt

J. A. Renwick

NAYS - 4

July 26th, 1973

2.30 - 2.35 pm

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AA =

(Mr. Bullbrook)

and in the absence of such, I would like to record the fact that I voted against the motion.

Mr. Chairman: I don't think it's any problem recording them.

Mr. W. Newman: ^{You} just want ~~to~~ recorded vote,
Mr. Bullbrook.

Mr. Bullbrook: Well, I am sorry my ~~inappropriate~~ use of language is improper. I would like to have a recorded vote.

Mr. Chairman: All right. Now, I don't think we need to follow the procedure in the House of naming them. I think we all know ~~the procedure~~.

Mr. Renwick: I guess we will stand up and bow to you.

Mr. Bullbrook: Absolutely.

Mr. Chairman: Well, about this time, I think I'd appreciate a few bows. But our clerk knows, and we'll ~~stand~~.

Mr. Bullbrook: Your ruling initially was worthy of many bows.

Mr. Chairman: But we'll have this recorded in Hansard. Now, just before I say ^{that} we are moving into camera, I want some thought on recording these proceedings in camera. I think I would adopt the procedure that we would first hear from Mr. Shibley and then - was that the other way around?

Mr. Henderson: No, the reverse. First hear from Canada Square.

Mr. Chairman: Oh, all right.

Mr. Q.G. Hodgson: Mr. Chairman, under those terms, I will change my vote.

Mr. Chairman: Wait now. I don't know whether we can ~~hear~~.

Mr. Q.G. Hodgson: Because I understood the other way around. I want to hear, Mr. Chairman, from our counsel

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2.30 - 2.35 pm

H 1488 - 3

AA

(MR. Chairman)

Mr. Chairman: Well, and retaining - yes the transcripts or the . . .

Mr. Bullbrook: We could call on the President of the United States to get advice on that.

Mr. Henderson: Mr. Chairman, I certainly don't mind coming out in open committee again and rendering our decision at that time. That part don't worry me, once we get the information as to whether we're . . .

Mr. Chairman: Mr. White, you can hold tapes, can you not?

Mr. White: Yes sir. We can hold any of the tapes or other information. We can make arrangements for their safe preservation. Yes.

Mr. Chairman: I think that's what perhaps we should ask that that be the procedure, that you do the recording, that those who are ~~now~~ where helping you record remember that this is - that their oath affects what they hear and that if the tapes are held in your hand until further instructions from the committee.

Mr. White: We could arrange, sir, not to have them transcribed.

Mr. Chairman: Well, that's, of course, what I mean, that you take the tapes and hold the tapes until you have further instructions on the recording or the dealing with them. They would not be transcribed.

Mr. Walker: Mr. Chairman, it might, to some extent, eliminate the need for a large number present, if stenographic service were provided, much like a court room and recorded in shorthand and retained in that fashion.

Mr. Chairman: Any provision for that Mr. White?

Mr. Walker: I don't ~~want to unduly~~ ~~have to look any further~~
~~than~~ the young lady over here, but

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2.30 - 2.35 pm

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AA

?
(Mr. Bullbrook)

Mr. Bullbrook: Well why do that?

Mr. White: I'd have to enquire about that.

Mr. Allan: Mr. Chairman, I don't think we are going to have the difficulties that we're anticipating or worrying about.

Mr. Chairman: I didn't anticipate any difficulties when I took on this chairmanship either, Mr. Allan.

Mr. Allan: I think Mr. White is a very responsible person.

~~Mr. Chairman: I am satisfied with the suggestion~~

~~that~~

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July 26, 1973
2:35-2:40 pm
V.H.

Mr. Chairman: I am satisfied with the suggestion, as long as the committee is, that they will be recorded and that the tapes will be held, and not transcribed at this time.

Mr. Renwick: Mr. Chairman, am I to understand that there is the possibility that the recording of these proceedings may never see the light of day so far as the public are concerned?

Mr. Chairman: Yes. I would think that's a possibility. That would depend -- at the discretion of the committee. I would hope that at some time they can be disclosed but I think that is the very purpose of ~~an~~ an in-camera meeting, that it is private. Now whether it happens that they may or may not be disclosed at some later date but if we say it will automatically be disclosed then I think we've destroyed the purpose of the meeting.

Mr. Renwick: Do I take it then that the evidence being given, if for some strange reason evidence is given by a witness before this committee and is part of that secret proceedings that that will never, may never form part of the public record of the evidence before this committee?

Mr. Chairman: I am not so sure that we are planning to deal with witnesses at this point are we? We are dealing with counsel.

Mr. Renwick: No, I understood Mr. Henderson, to the extent he responded to my question, was that we were going to hear Mr. Moog.

Mr. Henderson: Canada Square.

Mr. Renwick: Oh, ^{THAT'S} ~~that~~ Mr. Moog.

Mr. Chairman: Well, maybe we can ~~at~~ hear Canada Square by its counsel rather than Mr. Moog.

Mr. Finlayson: ~~(inaudible)~~ I'M PREPARED
TO RECALL MR MOOG TO ANSWER YOUR QUESTIONS
REGARDING CONFIDENTIALITY.

Mr. Chairman: Well I think Mr. Renwick is concerned that some of Mr. Moog's testimony may then remain private but I think that is a possibility, Mr. Renwick.

Mr. W. Newman: Mr. Chairman, it is also a possibility that only very small parts of it wouldn't be made public, is that not true?

Mr. Chairman: Well, I can't say that.

Mr. W. Newman: I am talking -- I realize that -- I am talking about Mr. Moog.

Mr. Chairman: I don't know how long the committee will be in camera and how much will be discussed. However, I think we have all the proceedings determined at the present time and that we need to move into camera. So I would ask that all of the people other than those earlier designated, that is counsel and the staff of Hansard, our own clerk, and the members of committee, that they would vacate at this time.

Mr. Renwick: Mr. Chairman, as a matter of convenience to the persons in the audience who have an interest in the proceedings, is it reasonable to think that they could depart this afternoon without sitting around while we go through this thing.

Mr. Chairman: I would estimate an hour at the most.

Mr. Renwick: We won't be in five minutes.

Mr. Chairman: I estimate an hour at the most.

Mr. Renwick: We could be there tomorrow.

Committee in camera at 2.40 p.m.

H-1490 follows

APPEARANCES

Committee members:	J.N. Allan
	J.E. Bullbrook
	I. Deans
	M. Gaunt
	L.C. Henderson
	R.G. Hodgson
	W. Hodgson
	J.P. MacBeth (Chairman)
	W. Newman
	J.A. Renwick
	G.W. Walker
Clerk of the committee:	Paul Moore
Committee counsel:	R.E. Shibley, QC
Assistant to committee counsel:	J.P. Bell
Ontario Hydro counsel:	Pierre Genest, QC
	James McCallum, QC
Canada Square counsel:	Douglas Laidlaw, QC
	Blair Cowper-Smith
	G.D. Finlayson, QC
President, Canada Square Corp. Ltd.	Gerhard W. Moog
Hansard Reporting Service	J. K. White

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LEGISLATURE OF ONTARIO

SELECT COMMITTEE

HYDRO HEADQUARTERS

Thursday, July 26, 1973

Afternoon session (in camera)



1490-149

SELECT COMMITTEE - HYDRO HEADQUARTERS
(11 - CAMERA)

Mr. Chairman: (speaking into)

... Canada Square, Mr. Moog or his counsel, and I
also would suggest to you that we should hear from Hydro as
to the results.

Mr. Chairman: Yes, well it was my assumption that
we would - although I know you mentioned Mr. Moog or Canada
Square - that we could hear from them via counsel, now what
is the risk of -

Mr. Henderson: That is what I want to know.

Mr. Chairman: Well all right then, I think that we
are going to ask you, Mr. Moog, and all possible witnesses to
leave on the 11th day of the court in front.

Mr. Henderson: Oh, I had hopes of Mr. Moog or Canada
Square.

Mr. Chairman: I just ask counsel?

Mr. Henderson: No, I had hopes.

Mr. Finlayson: Mr. Chairman, I wonder if I might
make a suggestion?

Mr. Chairman: Yes.

Mr. Finlayson: If I can make a suggestion, what I had
proposed to do was to ask Mr. Moog one question, and one question
only, and that is -

Mr. Buflbrock: Before you put the question, it is very
important to you, very important to you before you put the
question through the Chair, I say it is very important, because
I want to ask you a question that I don't know about, and please
bear with me, Mr. Finlayson, because it is very important to you.

Do I understand that I am now impressed upon myself
an oath of secrecy? You see this is something I don't know,
and I want to know, because although we and my colleague, Mr.
and I
Gaunt, and others I am sure others, all of us, have restricted
ourselves in public comment so that we wouldn't be in any way

H - 1490 - 3

(Mr. Walker)

public forum? Probably we would withdraw to ourselves
and - - - - -

Mr. Bullbrook: That begs the question.

H - 1490 - 4 follows

July 26, 1974
2.45-2.55 p.m.
C.B.

H - 1490 - 4

Mr. Walker: Just a moment, it's not begging the question.

Mr. Bullbrook: I'll show how it begs the question.

Mr. Walker: Why don't you wait until I finish my answer and then you can beg my question? When it comes time to write a report we can make our report and all of us then can make the decision whether we want to reveal any of the information that is under so-called wraps or not.

Mr. Bullbrook: I don't have to make any comment on that. I don't. You've already explained the difficulty yourself.

Mr. W. Newman: Mr. Chairman, ----

Mr. Walker: Just a moment.

Mr. Chairman: Mr. Walker?

Mr. Walker: It is very difficult to offer any type of response to what Mr. Bullbrook is saying when he offers the comments that he does in the way that he does. So hold on until I've finished and then you can have all the fun you want.

Now we can make the decisions we need to when it comes time to write the report and we can reveal at that time the information that we may wish to reveal. I don't think there is any problem whatsoever.

Mr. Renwick: Mr.-Chairman.

Mr. Chairman: Mr. Renwick.

Mr. Renwick: I would like the committee to seriously consider Mr. Hodgson of Victoria-Haliburton's view on this kind of discussion that we are now engaged in, since we've entered the Pandora's box, that it be held with members of the committee and the counsel to the committee before we proceed

2:45-2:55pm

C.B.

(Mr. Renwick)

any further. I might say I feel, ~~now~~, in a very real sense, trapped by what's happening here. I don't know the consequences of it. I just think they are extremely serious from the point of view of this committee and for the point of view ~~for~~ of future committees.

Mr. Allan: Mr. Chairman, I would like to associate myself with Mr. Renwick in those remarks. As I mentioned ~~the~~ first thing this morning I have - I never want to see a committee go into camera, and I'd hoped that good reason could prevail in some way and we could prevent this, and I think Mr. Renwick had the same thought. Now I think that we should do as Mr. Renwick suggests, that if the committee could agree to do that, then we could make up our minds from there where we went.

Mr. Chairman: I'm agreeable to that, but when I suggested it before, following Mr. Hodgson, it was pointed out that that was not the understanding of the motion and I felt that at that point we had to fall back on the motion and the ~~same~~ explanation that went with the motion.

Mr. Deans: That's ~~what~~ ^{the} ~~motion~~ ^{the} ~~motion~~ ^{the} ~~the~~ ^{the} the motion.

Mr. Chairman: ^{Yes.} Now if we are agreeable at this point we would rather just discuss where we are going with our own counsel for a minute. I would even suggest we don't need Hansard for that purpose. Do you agree?

Mr. Walker: I think that's a valid position, Mr. Chairman. I feel frankly that the tapes made up to this point could be public.

Mr. Chairman: Let's not decide that yet.

Mr. Walker: I mean right now.

Mr. Chairman: Let's not decide that yet.

Mr. Bullbrook: I'm going to be ~~the~~ petulant.

Mr. Chairman: Pensioned?

Mr. Bullbrook: Petulant.

Mr. Chairman: I thought you said pensioned,

I was going to cheer.

(In. Camera)

H 1490 - 6

July 26/73

2:40 - 2:56pm

C.B.

Mr. Bullbrook: I'm going to now withdraw. I'm going to now withdraw. I'm going to withdraw until you can advise me after the deliberations, after the deliberations of my colleagues in this committee, so they can tell me the position that I am in, in connection with what I can do now. Please, Mr. Shibley, bear with me. What I can do now and what I can do in connection with the writing of the report with respect to the further deliberations of the committee.

Mr. Bullbrook: Well, even if we ask counsel and just have an off-the-record meeting of our own?

Mr. Bullbrook: No.

Mr. Chairman: You are content to stay for that are you?

Mr. Bullbrook: No, I'm not.

Mr. Chairman: Oh.

Mr. W. Newman: Mr. Chairman.

Mr. Bullbrook: I don't want an off-the-record discussion at all.

Mr. W. Newman: Mr. Chairman.

Mr. Chairman: When I say "off-the-record" we've moved into camera and this is recognized Parliamentary procedure. It is not as though we are the first ones to have an in-camera meeting of a select committee. So that we are not establishing tradition at that point.

Mr. Bullbrook: I don't say we are.

Mr. Chairman: So that no one can force you to stay, but I would suggest that maybe Mr. Shibley ~~could~~ could tell us where we are ~~going~~.

Mr. Bullbrook: All right I'll reconsider it in that light.

Mr. Bullbrook: All right.

Mr. Pendleton: *Up to this point, but we*
tapes until we agree to it again.

Mr. Chairman: Mr. Newman.

Mr. W. Newman: Mr. Chairman, just following through on Mr. Bullbrook's comments, having sat on a few select committees, maybe more than I have wished to, quite often we do take information in camera. This information is available to the committee when they are writing their report. They have full access to that information, it is just not made public. That is my understanding of it and ~~the~~ maybe that may allay some of his small fears.

Mr. Bullbrook: No, it doesn't at all. It doesn't in any way allay my fears.

Mr. W. Newman: I know I shouldn't have said it to you. *But anyway, that's been the practice in other commi-*

Mr. Chairman: Mr. Deans.

Mr. Bullbrook: I appreciate your comment very much.

Mr. Deans: Mr. Chairman, this is getting -- going from worse to worse. What is it we are going to chat about? You know, I mean, this is what I don't understand. I don't want to sit around and talk about the future. I thought that we were going -- well, I expressed my opinion. I frankly hoped that we wouldn't get to this point and I'm really quite worried about the committee being in an in-camera session to talk among itself about things in general. You know, there is just no end to it. *Once you* ~~begin~~ begin this sort of ~~thing~~ a thing, its a never ending process.

Mr. Chairman: Well, we certainly havent done much of it in two and half months.

Mr. R.C. Hodman: *distinct,* I see two different things. First of all, we have to and I see no way we are going to get out of this and that is to decide among ourselves the procedure and how we are going to proceed in camera. Mr.

H-1491 - 3

(Mr. R. G. Hodgson)

Bullbrook raised the one very point that has to be considered. It has to be considered by the committee and our counsel by ourselves.

I see the other point of the reasons from Canada Square and from Hydro and any comment they may wish to make on that as being very important and another consideration.

But I was worried about this and that is why I suggested having this session among ourselves to start with because I just don't see how you can proceed without a procedure.

Mr. Chairman: All right. I would ask from here on in that the counsel, ^{other} ~~of the~~ counsel, leave and that the Hansard does now cease its recording.

#52

LEGISLATURE OF ONTARIO

SELECT COMMITTEE

HYDRO HEADQUARTERS

and

Afternoon session

H 1520-1 July 30/73
(Tapes 1492 to 1519, covering
in camera sessions, not transcribed, 2:50-2:55pm
C.B.

THE ONTARIO LEGISLATURE, SELECT COMMITTEE
HYDRO HEADQUARTERS

The committee met at 2.50 p.m, in the members' board room.

Mr. Chairman: Ladies and gentlemen, I call the
public meeting back to order. I have a statement to make
on behalf of the committee.

The committee met in camera, briefly, Thursday
afternoon, July 26th, and the record of this session has been
released. The committee then went into executive session for
some time and then met again in camera.

On Monday morning, July 30, the committee continued
in camera and then met in executive session. During the in
camera sessions the committee heard representations from
Canada Square as to whether the examination of Mr. Moog should
be in public on matters relating to his financial negotiations
concerning the Hydro building over the period from July 1971
to date, including the name of the expected lender, the rate
of interest and other terms, and the source of funds.

The committee also heard representations from Ontario
Hydro. It has been a difficult question for the committee to
resolve. The committee has used as a guide one of the tests
set out in the Statutory Powers Procedure Act, statutes of
Ontario, 1971, volume 2, chapter 47, section ~~9(1)(b)~~ 9(1)(b)

The test used was as follows: "A hearing shall
be open to the public except where the tribunal is of the
opinion that matters may be disclosed at the hearing of such
a nature, having regard to the circumstances, that the desirability
of avoiding disclosure thereof in the interest of any person
affected or in the public interest outweighs the desirability

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2:50- 2:55 pm

C.B.

(Mr. Chairman)

of adhering to the principle that hearings be open to the public, in which case the tribunal may hold the hearing concerning any such matters in camera.⁷⁷

The committee specifically is aware that the provisions of this Act do not apply to a committee of the Legislature, but considers it a proper test in this instance.

The committee has agreed unanimously that it should now proceed to hear Mr. Moog's testimony in public.

Now that is the ruling of the committee, or the statement that I've been authorized to make on its behalf, and I'd ask Mr. Moore if you'd prepare some copies of that for both the committee members and members of the public and press.

Well Mr. Shibley, if you would proceed, sir, and if Mr. Moog would retake ^{his} place, ~~and~~ he's already been sworn. Mr. Moog you've already been sworn. It is getting ^{to be} ~~such~~ time since ^{you} ~~we~~ were here before that ^{you} ~~we~~ forgot that you were giving testimony.

Mr. Shibley: Members of the committee and Mr. Moog, in order to bring everybody's mind into context of the line of examination, I now intend to continue with this witness, I want to go back and in point form establish a chronology already established by the evidence that I think is salient.

The first date is a memorandum of March 27th, exhibit 64, wherein Mr. Mink instructed Mr. Candy to ascertain how secure were the financing arrangements and what type of financing ~~was~~ ^{was} being proposed by Canada Inc.

There was a meeting on March 30th, 1972, ~~attended~~

July 30, 1973
2:55 - 3:00 p.m.
M.R.

(Mr. Shibley)

as evidenced by Mr. Candy's memorandum, Exhibit 65, wherein Mr. Candy reported to the file, for the information of Hydro people, that the portion of the financing which was Swiss, being \$20 million of the total, was secure at 6.5 per cent and his memorandum went on to provide further details, namely that there was government tax involved to be absorbed by the developer. That is to be put in the context of a meeting, which is evidenced by Mr. Candy's diary, between Mr. Candy and Mr. Moog, so that in March Candy is asked to check out these two things; on March 30th he meets with Mr. Moog and on the same date he references the arrangements as for the Swiss portion of the funding being secure and there are other things in that memorandum.

Now, then, the next matter that I wish to refer to is the fact that the last document in the file of documents containing correspondence with that same Swiss bank as had been visited in August, 1971, on August 13, 1971, is a letter, and on more careful review, you will remember, I should tell you first of all, that Mr. Moog has testified that there was a seminar in Toronto some time in May, 1972 in which this individual, I believe, was a participant - I think that was his evidence - and that the message he had asked be conveyed through him was he regretted that no further progress or there had been - the arrangements with that bank vis-a-vis the Hydro building had come to an end.

On careful reading of the letter again, I want to re-read it to you now, it's in exhibit - or at least, it is not in exhibit - this is already in Hansard - he said, "As I mentioned to you, ..." - I'm sorry, I haven't got the right file without John being here.

Mr. Chairman: Mr. Moore, maybe you can track down Mr. Bell for a minute. We'll just hold until we get Mr. Bell here.


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M.R.

Mr. Shibley: No, I have it now, I'm sorry.

This is a letter dated May 15, 1972, in which he says:
"Just a line again to thank you for having taken the trouble to come downtown to my hotel to meet me. As I told you, I will do some travelling before I return to Zurich, but about the middle of June I intend to be back in Zurich and I will then certainly give your message to ^{it}so and so and so and so, ^{it}they being the two Swiss bankers who had been met in August 13, 1971.

The significant portion of that statement being the timing at which this gentleman expected to be able to convey a message to those two Swiss bankers upon his return to Zurich about the middle of June, 1972.

Then, you will remember that Mr. Candy on July 19, 1972 did a memorandum in which he records that he reported to the meeting of the Hydro commission on that same day, being the day on which the Hydro commission passed a decision to contract with Canada Square



H-1522 to follow

KJuly 30th, 1973

3- 3.05 pm

H 1522 - 1

AA

(Mr. Shibley)

~~What the Hydro Commission has been doing is to~~
~~with Candy Savane~~ that the developer anticipated that the
whole of ~~the~~ ^{THE} financing would be Swiss. So we have the
chronology, March 30th, half Swiss secure, ~~and~~ ^{and} some time in the
first half of May, being prior to the date of that ~~latter~~ ^{LETTER}, a
meeting with a Swiss banker from that bank here in Toronto, with a
a message to be communicated sometime in mid-June and a
Report of Mr. Candy to the Commission on July 18th. And in
the intervening period, in addition to the meeting with the
Swiss banker, what is now exhibit 189, being a memorandum
prepared by Mr. Moog, dated June 21, 1972, the last portion
of which says, "He figures that Don Waugh would want 8-1/2 to
nine per cent on the Hydro deal. I then suggested that we
work out a put-through deal, whereby we organize funds for
Equitable, in Switzerland. Equitable charges a minimal markup
and loans us the money, with us compensating for any exchange
risk."

So that again, in chronology, March, half Swiss,
the first half of May, a meeting with a Swiss banker, who
expects to communicate a ~~message to the Commission~~ message in mid June. On
June 21, a memorandum about a put-through deal, and on July 18,
I believe it is, Candy reporting information to the Commission
that the developer anticipates all of the funding will be
Swiss.

Mr. Renwick: July 19th.

Mr. Shibley: July 19th. Thank you. And then

Mr. Moog was examined and I want again to make the record complete
at this time, to remind the members that the following
evidence was given by him at pages 1453 - 2. I asked, "I want
to know, did you have any dealings with any other Swiss bank"
and I had been talking about the Swiss bank they had been
visiting on August 13, 1971. "Did you have dealings with

July 30th, 1973

3 - 3.05 pm

H 1522 - 2

AA

(Mr. Shibley)

any other Swiss bank pending July 18, 1972?"

"Mr. Moog: No sir."

"Mr. Shibley: So that any reference to a Swiss bank up until July 18th, 1972, would not have to do with communications made between you and any bank other than the Swiss bank visited with the Premier in August, 1971. Is that correct?"

"Mr. Moog: If I made specific reference to a Swiss bank, which I don't think I ever did."

"Mr. Shibley: But in any event, you had no communications with any other bank pending July 18 in Switzerland, any other Swiss bank."

"Mr. Moog: No sir, ~~was~~ not a bank."

"Mr. Shibley: All right."

"And Mr. Henderson said later, 'Was there another financial institution?'"

"Mr. Shibley: Thank you. Did you deal with anyone in Switzerland pending July 18?"

"Mr. Moog: I had discussions with friends of mine in Switzerland."

"Mr. Shibley: Referable to the head office financing?"

"Mr. Moog: No about financing in ~~Switzerland~~ Switzerland. About the financial climate in Switzerland."

"Mr. Shibley: Yes, but I am talking only about Hydro head office financing."

"Mr. Moog: I never did anything specific about Hydro ever."

Then on the next page, at least 145~~3~~ 2, at the bottom, 'And what this really amounts to is that you would arrange for moneys to be loaned from Switzerland to the Eouftable company. Is that correct?'"

~~Mr. Moog:~~ I am talking about the memo, exhibit, x9.

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3 - 3.05 pm

AA

H 1522 - 3

(Mr. Shibley)

"Mr. Moog: That was the thought I had at that time obviously.

"Mr. Shibley: Just hold on a minute. And Equitable, in turn, would loan the money to Hydro. Is that right?

"Mr. Moog: To my company.

"Mr. Shibley: All right, to ~~my~~ your company for the Hydro building.

"Mr. Moog: Right.

H 1523 - 1

July 30, 1973
3.05-3.10 p.m.
M.F.

H - 1523 - 1

(Mr. Shibley)

~~be to Hydro, is that right?~~

~~Mr. Moog: To my company.~~

~~Mr. Shibley: All right, to your company for the Hydro building?~~

~~Mr. Moog: Right.~~

"Mr. Shibley: And so the loan would appear to be a loan from Equitable to you, is that correct?

"Mr. Moog: Quite so.

"Mr. Shibley: Whereas the moneys that were funding that loan would emanate out of Switzerland to Equitable, is that right?

"Mr. Moog: That's right.

"Mr. Shibley: And that is what is meant by a put-through deal?

"Mr. Moog: That's right.

"Mr. Shibley: And you were talking about a put-through deal for the Hydro head office on June 21, 1972, weren't you?

"Mr. Moog: Yes. I was trying that on for size on Equitable Life even before that".

Then, on the next page, or at the bottom, I think we can skip some of it:

"I see. But you were contemplating a put-through deal for the Hydro building using Swiss moneys as the real source of funds?

"Mr. Moog: Just a moment, Mr. Shibley, I would just like to explain this again.

"Mr. Shibley: Surely.

"Mr. Moog: If you read the paragraph before that, I had some trouble with some of the people in head office and Mr. Waugh is vice-president. I have previously dealt with people about Mr. Waugh. Mr. Waugh had advanced and Mr. Waugh was always against investing in Canada. And here again I had a situation where he wanted eight and a half to nine per cent. I considered that

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M.F.

H - 1523 - 2

(Mr. Shibley)

very high. I wanted to get money in the U.S. but I couldn't get it down to where I wanted it, and where I now have it, hopefully. So I talked to Mr. Keegan, whom I work with very closely and of course I work with ~~superiors~~^{superiors} of Mr. Waugh very closely."

Then he goes on and he ~~said~~^{says} about a quarter of the way down.

"If you are going to be sitting on your high horse asking eight and a half to nine per cent, if I all of a sudden get you a loan for a change from Switzerland ~~at~~^{you} at six and a half percent so that ~~in~~^{you} effect can then loan me money at a lower rate than eight and a half to nine."

And I ask you to note "loan me money at a lower rate than eight and a half to nine per cent". "That is all I meant by that".

And then I go on to mention, "Well the timing is of interest to us, Mr. Moog, because this also happens to be taking place during the period intervening between March 30, 1972, when Candy reports that you told him your Swiss financing was secure for \$20 million, and July 18, when he is reporting that you anticipate full financing from Switzerland, and I remind you that you have met with a Swiss banker from that same Swiss bank in Toronto in May, 1972.

"Mr. Moog: I hope I have made my position clear what happened at that same Swiss bank yesterday."

Mr. Shibley: Then again ---- I think really that is about all I need to do with that past material.

Mr. Moog, you will notice that I have made specific reference to the last document in the file which was in dispute, the one where you had had this social visit with the Swiss banker in Toronto, and he talked about not being able to return, or ~~he~~^{he} didn't expect to return to Zurich until mid-June and he

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3.05-3.10 p.m.
M.F.

H - 1523 - 3

[Mr. Shibley)

would convey your message at that time. You have heard me read you that?

Mr. Moog: That is right.

Mr. Shibley: And I ask you again whether the message that was being conveyed to that bank had to do with the Hydro head office financing?

Mr. Moog: I explained my message quite clearly, Mr. Shibley, you just - maybe you did read part of it or maybe you didn't. To the extent, as I have said previously, it had, yes.

Mr. Shibley: Well, is it then a coincidence that on June 21, you are still talking ~~about organizing the sale~~

Tape H 1524 follows

July 30, 1973
3 10 - 3:15 pm
JLP

(Mr. Shibley)

~~_____~~
about organizing funds for Equitable in Switzerland, June 21 being shortly after mid-June when this message was going to be conveyed to Switzerland?

Mr. Moog: Mr. Shibley, this wasn't any secret message or anything peculiar at all; it was just a chat we had as I described it, and all I did with Mr. Keegan at the time was to use my argument that there is money elsewhere, not just in North America, with him, and that's all. Just as ~~in~~ in that memorandum.

Mr. Shibley: I would just like you to answer my question. You are saying it was a mere coincidence?

Mr. Moog: Mere coincidence.

Mr. Shibley: I see. And is it mere coincidence that it is reported by Mr. Candy on July 18 that the whole of the financing was to be Swiss?

Mr. Moog: I believe I stated earlier that at one time or another I did tell Mr. Candy that if we had to fall back on Swiss financing we would think we would take it all from Switzerland, that that was something for us to fall back on, and that we would be able, or would be willing to assume all the, if you wish, onerous parts of a Swiss loan if ~~we~~ ^{we} had to; ^{but not} There's money there and, if we had to get it from there, we would.

Mr. Shibley: What discussions did you have with Equitable referable to doing a put-through deal?

Mr. Moog: It was a scheme of mine; it was an idea that if the North American money market would be short, and at times it is, at times there is great pressure on the American money market; as a matter of fact, I think at this moment there is quite a shortage of funds in North America, hence high interest rates. I suggested to them that maybe I should go to ~~xxxxxx~~ ^{work for} Equitable and organize ~~their~~ funds, if they had to borrow money or loan me money; it's quite correct what you have stated, Mr. Shibley, that this was an idea of mine.

July 30, 1973
3:10 - 3:15 pm
JLP

Mr. Shibley: And how long did those conversations with Equitable continue?

Mr. Moog: I think I mentioned that idea to higher-ups in Equitable as well; ^{I have} a very ~~good~~ good friend of mine who is in a very high position in Equitable Life and said the same thing to him. I said, ^{if} your company cannot loan me money because you can't raise money in North America, why don't you raise money overseas so that you are in a position to then give me money? I want North American money because I want to get away from all the other problems associated with European funds.^A

Mr. Shibley: And do you have any objection to mentioning the name of that higher-up in Equitable?

Mr. Moog: I think he is in one of the letters, Mr.

Shibley; I would prefer not to; I don't mean to be obstinate. that one letter where we deal with ~~the~~ Canada's Cup. It's in ~~Maxx Shibley's xxxxxxxx~~

Mr. Shibley: All right. How long did you carry on these discussions, Mr. Moog?

Mr. Moog: I might have had three or four discussions on a day; they never ^{lead} to anything.

Mr. Shibley: How late, in point of time, in 1972 did you carry on those discussions?

Mr. Moog: I am trying to think about that. I couldn't tell you exactly. I used that Swiss availability of funds for some time with Equitable because I didn't really realize whether there they had money ~~for~~ whether they didn't, or whether they were just playing the game as often in the money market is the case.

Mr. Shibley: Mr. Moog, --

Mr. Moog: I am trying to recall. I really can't give you an exact answer, Mr. Shibley.

Mr. Shibley: I didn't ask for an exact day. Would you give me your best estimate?

Mr. Moog: Maybe if I had a look at that letter, which is directly with this other gentleman in Equitable, perhaps that would give me some more indication of it.

H 1525 - 1

July 30/73

3:15 - 3:20 pm

C.B.

(Mr. Moog)

I've got a letter here dated ~~September 28th~~ September 28th, and I'm not saying I did and I'm not saying I didn't but it is feasible that I discussed that situation with that other gentleman even at that time. It is quite possible.

Mr. Bullbrook: What month was that again?

Mr. Moog: September 28, 1972, Mr. Bullbrook.

Mr. Shibley: September 28, 1972. And did you not carry forward your discussions even after that date?

Mr. Moog: Well I never got very much response on it. We had a meeting at Equitable, maybe I can just give you a date. Well I have a letter here which is addressed to Mr. Bradshaw dated August 16th, and I hope I'm not - I cannot give you an exact date but when I was down at Equitable, I think it would be more than likely that I would use the situation of availability of money in Europe as a point of negotiation. I want to make that quite clear. I did certainly do that.

Mr. Shibley: I want to know how long you continued the discussions of a put-through deal with Equitable and you've referenced a letter of September 28, 1972, we'll come back to that. Did you continue to discuss a put-through deal, even after September 28th, 1972?

Mr. Moog: Mr. Shibley, perhaps I can give you the absolute outside limit, I'm not saying that I used it until then. But at one time or another we ran into problems with Equitable because of withholding tax, and then the Equitable deal was dead as anything else was dead. That was certainly the outside time. Now whether I did use that particular argument as late as that or not, I really cannot recall. I don't really think it is material. At ~~least~~ ^{least} in my opinion it isn't

July 30/73

3:15 - 3:20 pm

C.B.

(Mr-Moog)

But when we were advised by Equitable that there was no way that they could go along with us, it was of their own withholding tax problems and you have some correspondence on that subject, that was it. Then I certainly didn't discuss it any further. Perhaps that helps you.

Mr. Shibley: I'm going to highlight this with you first and then come back over it Mr. Moog. So you'll forgive me if there is some overlapping, but I'm interest in getting some skeleton outline of what was going on.

So that up until September 28, 1972, what you were endeavouring to do fund the head office building of Hydro was to arrange Swiss funds to be provided to Equitable and....

Mr. Moog: Mr. Shibley, can I just make a statement here that we don't get the wrong impression on this. I used that in negotiations. I used it in - I'm not going to ^{to} go to a major insurance company and knock on their door and say "I know you are the only ones in the world who have got money, would you please give it to me" and take any rate they offer to me. I used the availability of Swiss money as simply a tool if you wish. I knew I could get it and certainly took it with me to Equitable, I'm not denying that, never have, and when exactly I used it - I can't tell you that I dropped it ^{At} that meeting or the previous meeting. I've given you the outside date. Certainly when the Equitable deal was dead that deal was dead.

Mr. Shibley: Well then are you telling this committee that you never really seriously considered doing a put-through deal, you were only using it as a negotiating position?

Mr. Moog: That is what I'm saying. That is all it amounted to. Now if I would have been able to get a response from Equitable, that they would have said "Oh this is great", that's perfect. I would think that I would have followed up on it.

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3:15 - 3:20 pm

C.B.

Mr. Shibley: I see. But you never...

Mr. Moog: I never got a favourable response.

Mr. Shibley: And you never investigated the Swiss
funding in depth then?

Mr. Moog: I never did sir.


Mr. Shibley: I see.

Mr. Moog: I'm trying to say that I'm saying it
again, I never, never did.

Mr. Shibley: You never investigated Swiss financing
in depth?

Mr. Moog: No, I did not sir.

Mr. Shibley: Then I want produced to you a document
which is the last document in that file which.



H 1522 to follow

July 30, 1973
3.20 - 3.25 p.m.
M.R.

(Mr. Shibley)

~~...a document which is the last document in that file which~~
was produced to us, ~~and~~ described as a financial file, not to be confused with the file that was in dispute. Would you please produce that document to the witness?

Mr. Renwick: Perhaps while we are waiting for it to be produced, you might ask Mr. Moog what that outside date was to which he referred. I don't ~~see~~ ^{think we ever got that} ~~memorandum~~.

Mr. Moog: I think, Mr. Renwick, it comes out of one of the documents where Equitable said they couldn't go on or when we ran into the snag on the withholding tax.

I've seen
Mr. Shibley: ~~There's~~ no such document, Mr. Moog.

Mr. Moog: Well, isn't there something where we got a letter from Equitable which ~~referred~~

Mr. Shibley: The last letter that we have in our possession from you referable - the letters we have from Equitable are dated August 16, 1972, September 28, 1972 and no other letters. There is a memorandum of September 8, 1972 referable to withholding tax.

Mr. Moog: Well, that is the sort of thing I'm talking about.

Mr. Shibley: Yes.

Mr. Moog: We discussed that

Mr. Shibley: But I have no communication provided by you to me in response to any of these letters nor any indication of a cut-off date.

Mr. Moog: I have nothing else. This is all I have in my possession and ~~see~~

Mr. Shibley: I see.

Mr. Moog: ~~...so~~ ^{So} I would think in that general period, Mr. Renwick, the deal died.

Mr. Shibley: Have you any documents in your control that would supplement the two letters that you've provided to me from Equitable?

Mr. Moog: That would supplement? I don't follow you.

July 30, 1973
3.20 - 3.25 p.m.
M.R.

Mr. Shibley: To fill out the information ~~on~~

Mr. Moog: No. I often pick up the phone and talk to Equitable and it could have easily been - the death could have ~~ah~~ happened on the phone.

Mr. Shibley: I see. You don't know ^{ch} the existence of other correspondence?

Mr. Sm Moog: No, I am not aware of that.

Mr. Shibley: You're not?

Mr. Moog: I am not aware of any correspondence.

Mr. Shibley: All right.

Well, now, you have told us that you never investigated the Swiss financing in depth. I've shown you a document that I asked ~~to~~ be made the next exhibit in these proceedings, Mr. Chairman?

Mr. Chairman: I'm just checking the number there. I think it's 190.

Mr. Shibley: Exhibit 190.

Mr. Moog: Which is that, ~~one~~ ^{one of my scribbling?}

Mr. Chairman: 191.

Mr. Shibley: 191.

Mr. Moog: This is it? My scribbling?

Mr. Shibley: Yes.

Mr. Moog: All right.

Mr. Shibley: And I want to go down that document with you, Mr. Moog. Is this in your handwriting?

Mr. Moog: Yes, that's my handwriting, sir.

Mr. Shibley: So, whatever is the information on this, is ~~one~~

Mr. Moog: I've put down.

Mr. Shibley: Yes. And it starts off at the top - would you help us with your writing - it starts off "Hydro", is that correct?

Mr. Moog: Let me put my glasses on.

Mr. Walker: Mr. Chairman, you might be most expansive in this because we can't read ours period.

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3:20 - 3:25 p.m.
M.R.

Mr. Shibley: Yes. Thank you. Mr. Moog, would you help us along here? It starts off "Hydro..."

Mr. Moog: *As much as I possibly can. I know I've got*

Mr. Shibley: And on the upper right hand corner it says "9 per cent" and then what does it say?

Do you have the original ~~xxx~~ in your file, please? Maybe that would help you.

Mr. Deans: It's the upper left-hand ~~xxxxxx~~ corner.

Mr. Shibley: Upper left-hand corner, sorry.

Mr. Moog: What date would that be, have you any idea?

Mr. Shibley: It's the last document in the file we were given as the finance file.

Mr. Moog: Oh, I don't have the finance file with me. I'm sorry. I certainly can get it for you, Mr. Shibley. Perhaps I can decipher what's in there. I don't have the finance file.

Mr. Shibley: You don't have the finance file?

Mr. Moog: Not right here.

Mr. Shibley: All right. Well, let's work to the copy. On the upper left-hand corner, what does it say?

Mr. Moog: There's a 9 in there and - I can't read what's in there on the left-hand corner.

Mr. Shibley: Well, it seems to say "9 per cent" or "25" something - I don't know what that is, "over two years"

Mr. Moog: Over - oh, yes, that could be on the interim, I think. I would be guessing on that, but I think you are probably right.

Mr. Shibley: All right. And then it says, "xxx"...

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H 1527 - 1

3.25 - 3.30 pm
AA

(MR. Moog)

~~I think that would be correct. It is on page 1 of the report and~~
~~probably right.~~

Mr. Shibley: All right. And then it says "fees."

Is that right?

Mr. Moog: Yes. I think that is what it says.

Mr. Shibley: Bracket, "technical." Is that
right.

Mr. Moog: Right.

Mr. Shibley: "Architectural fees." Is that
what that says?

Mr. Moog: I think that is what it would say. Yes.

Mr. Shibley: Or what is that. Is that "arch?"

Mr. Moog: "Arch" and "Eng", I believe it says.

If that is what it is, it says architectural engineering.

Mr. Shibley: Architectural engineering and is
that 2.5?

Mr. Moog: \$ 2.5 million, I believe.

Mr. Shibley: Million?

Mr. Moog: Yes.

Mr. Shibley: I see. And then "Financing interest?"

Mr. Moog: Interim.

Mr. Shibley: Oh, "Financing interim."

Mr. Moog: Right.

Mr. Shibley: What's that?

Mr. Moog: Well, that would be part of my interim
financing costs.

Mr. Shibley: Yes. \$4.5 million. Is that right?

Mr. Moog: Oh, I am in good shape now. I have
got a good copy. Right, thank you.

Mr. Shibley: And the next thing is "financing
fees, Switzerland - 1.1." What's that? Or 4 point - I think it is 1.1.

Mr. Moog: I think it is 1.1.

Mr. Shibley: Is that 1.1 million?

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3.25 - 3.30 pm

H 1527 - 2

AA

(Mr. Moog)

Mr. Moog: 1.1 million. Yes that would be all millions.

Mr. Shibley: And that would be fees for what? Switzerland?

Mr. Moog: I think they are probably part of those fees in that file. That would be part of an arrangement fee, I would think.

Mr. Shibley: Well, what arrangement?

Mr. Moog: Well, if I had to get a loan in Switzerland, I think there is a certain amount of ~~arrangement~~ arrangement fee necessary. I think at one point, it says a five per cent fee, if I remember right, and I would have to check what I am saying. Five per cent on \$20 million would be about - a little more than five per cent would ~~be~~ be about a million ~~dollars~~ dollars.

Mr. Shibley: Yes, so you had to pay a fee to somebody for this money.

Mr. Moog: I think, Mr. Shibley, and please I haven't got it all at my finger tips, I believe it's a five per cent government fee, Swiss government fee I am referring to.

Mr. Shibley: I see. Is that what you were talking about to Candy when you told him the developer would absorb - when he reports, the developer would absorb the fee?

Mr. Moog: I really would have to study this again.

Mr. Shibley: I am sorry. It is a tax?

Mr. Moog: Just to come closer to it, either this is a tax or a fee, but it is something of that nature.

Mr. Shibley: And is that what Candy's reporting on to Hydro? on July 19 when he ~~said~~ said . . .

Mr. Moog: What I said to Mr. Candy is that any -

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3.25 - 3.30 pm
AA

H1527 - 3

(Mr. Moog)

I should have certainly said any fees and taxes and I think I only said taxes, because I think the tax itself is quite high if you get money from Switzerland.

Mr. Shibley: Any fees or taxes you would pay.

Mr. Moog: I would pay, yes.

Mr. Shibley: And this would be the item that he is reporting on to Hydro?

Mr. Moog: I don't think he ever knew what the item was and how much it was, but I would say it would be that general thing. Yes, it would fall in that category.

Mr. Shibley: - So on July 19th - I am sorry, July 18th, when Candy's reporting to Hydro that the developer would absorb the government tax, it would be this fee payable in Switzerland of \$1,100,000 that you and he had been talking about.

Mr. Moog: Yes.

Mr. Shibley: All right. And then we go on, the next item, "Commission" something. What's that.

Mr. Moog: Yes. I am trying to decide what that one is. "Commission" - it is obviously another commission payment to somebody.

Mr. Shibley: Yes. To whom?

Mr. Moog: What date was this document, Mr. Shibley?

Mr. Shibley: Well, I would like you to tell me what ~~the~~ date the document is.

Mr. Moog: We are all going to be ^{IN TROUBLE} ~~talking~~ - we are going to be ^{IN TROUBLE} ~~talking~~ - I wouldn't know.

Mr. Shibley: The only thing that helped us so far, Mr. Moog, is that apparently you ^{have} ~~had~~ discussion as to some of its content with Mr. Candy, as at July 18th.

Mr. Moog: Well, now, I think this is a later document, because if I didn't ^{spell} ~~"Ames"~~ "Ames" with a "Y" then I would say this name could be "Ames".

July 30th, 1973

3.25 - 3.30 pm

H 1527 - 4

AA

(Mr. Shibley)

Mr. Shibley: Whereabouts are you talking about?

Mr. Moog: That commission ~~and~~ and the name behind it.

But I have got a "Y" in there and I should know that Ames isn't spelled with a "Y." This is why I am at a bit of a loss.

Mr. Shibley: I see.

Mr. Moog: And if it is Ames, then I would say it would be later.

Mr. Shibley: Later.

Mr. Moog: Yes.

Mr. Shibley: It would be after September 28th?

Mr. Moog: I would think - I would presume so.

Again, please, on dates, I am not as good as you are.

Mr. Shibley: I am trying hard with you, Mr. Moog, to establish the ~~the~~ chronology and I think that we are doing quite well. ~~So you say - commission, Ames~~

H 1528 - 1 follows

July 20, 1973
3:30 - 3:35 pm
JIP

(Mr. Shibley)

~~trying hard with you, Mr. Moog, to establish chronology and I~~
~~think that we're doing quite well~~ You say "commission Ames," that's
what you expected to pay to Ames.

Mr. Bullbrook: No, no, he did not say that.

Mr. Moog: I said, Mr. Bullbrook, in fairness, ^{I said} it could
be Ames. I just don't know why I would spell it with a "y" that's
what puzzles me, otherwise I would say it is Ames.

Mr. Shibley: And that's why you think it's later in
point of time?

Mr. Moog: That is why I would think it would be later
and that would be my deduction.

Mr. Shibley: Would that be point three million dollars?

Mr. Moog: Point three million, yes.

Mr. Shibley: That would be like \$300,000?

Mr. Moog: That would be like \$300,000, that's correct.

Mr. Shibley: And that I gather was what you ^{were} computing
to be the commission payable to Ames. Is that correct?

Mr. Moog: At one time, I thought I might have to go as
high as that.

Mr. Shibley: Yes. All right. ~~Now~~ Let's go on then.
Then there is legal and auditing, I think it is.

Mr. Moog: I think that's correct: "auditing," yes.

Mr. Shibley: Which would be point five, or half a million
dollars?

Mr. Moog: Half a million dollars, right.

Mr. Shibley: ~~and~~ Is that next figure meaningful or is
that something of a sub-total?

Mr. Moog: I think it would appear to me like a sub-total
because if I didn't make a mistake in arithmetic, I think the total
adds up to 8.9 million does it not?

Mr. Shibley: Yes, that's right.

Mr. Moog: Have you done the ^{arithmetic} ~~sixty-nine~~ on it?

Mr. Shibley: Yes, I have.

Mr. Moog: I'll take your word for it.

Mr. Shibley: That's right; that's why I think that ^{1 2} ~~one two~~

July 30, 1973
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JLP

(Mr. Shibley)

is really no part of the overall break-out, or is it?

Mr. Moog: I don't really think so. I think that's just a scribbling of mine.

Mr. Shibley: All right. It says a "something possibility." Does that say a distinct possibility, or what?

Mr. Moog: It says - yes, I think you're right, I think it should be saying distinct possibility.

Mr. Shibley: Or is that underwriting, or is it distinct, or what is that word?

Mr. Moog: Well, I cannot identify it myself. seems to me it says

Mr. Shibley: I see. It says "a distinct possibility ways and means of doing business." Is that right?

Mr. Moog: I agree with you on that.

Mr. Shibley: What's that content? Where did you get this? Is this something that was a matter of conversation between you and someone?

Mr. Moog: No, I would think that I would down, well, this is what it might cost me if I had to go this route, that that would be a distinct possibility, and it's just a ways and means of doing business if I had to do business in Switzerland. I suppose that's what I'm referring to here

Mr. Shibley: I see

Mr. Moog: And I'm just now guessing myself at that time.

Mr. Shibley: Just stopping there for a moment, Mr. Moog. The ultimate financing for the Hydrogen ~~energy~~ project was arranged for through Ames and Company, wasn't it?

Mr. Moog: We put it through Ames, yes, Mr. Shibley.

Mr. Shibley: And this memorandum makes reference to Ames, according to what you have said.

Mr. Moog: If that is Ames, I would say "yes". It's a commission. Whether it's Ames or whether I had to use a trust company or whatever it might be, I was aware of the fact that if I was going to deal with the other insurance company, whoever we dealt with finally, it's common practice that the insurance company

(Mr. Moog)

usually has a favourite agency where they would like to have their deals put through.

Mr. Shibley: All right. That's right. As at the time you were creating this memorandum, you were already dealing with Ames on behalf of the institution which provided the ultimate commitment for Hydro's head office financing. Is that correct?

Mr. Moog: Maybe I should just explain a bit about Ames at this moment. The man I dealt ~~with~~ in Ames was a man who was on my floor at the building at 2200 Yonge Street, at Canada Square, ^{and} I became very friendly with him over the years. As a matter of fact, at one time I would have liked to hire him, a very capable man, and his name is Mr. - well, maybe I don't have to go into names right now. But I have talked on and off, as one of my sources of information, to that gentleman. And I felt that if at any time I would come to a deal I would certainly give him a preferred position of working with, and that is, I think, how we got into ^{it} with Ames.

Mr. Shibley: That's all very interesting. At the moment ^{you} what I want to know is that as at the time ~~you~~ were detailing the arrangements for funding Hydro's building with Swiss money, you were even then dealing with Ames on behalf of the ultimate institution which funded the building. Is that correct?

Mr. Moog: I am sorry. ~~What~~ Would you repeat that please?

M

11-11-60
The attached files

July 30, 1973
3.40-3.45 p.m.
M.F.

H - 1529 - 1

(Mr. Shibley)

~~behalf of the ultimate source of funds for the building
is that correct?~~

Mr. Moog: I am sorry, would you repeat that please?

Mr. Shibley: Ames is the agent for the institution which ultimately provided funding for this building?

Mr. Moog: Right.

Mr. Shibley: That is the agency through which you ultimately got your commitment, is that right?

Mr. Moog: Where we put the commitments, right. ~~Urban~~.

Mr. Shibley: Yes. And this memorandum references Ames so that as at the time ^{of} this breakdown of arrangements for Swiss funding, you were then dealing ~~with~~ with Ames?

Mr. Moog: We were thinking of Ames as a source, that is right, as an agency to deal with, yes.

Mr. Shibley: And you were then dealing with what - and I am not saying that ~~it~~ ^{it} was ~~of~~ ^{Swiss} necessarily, but you were then dealing with the agency that ultimately provided the financing on the basis of talking Swiss money?

Mr. Moog: Oh I certainly mentioned Swiss money to that agency too. I do not deny that, if that is the question.

Mr. Shibley: So that you carried forward your concept of putting through Swiss money -----

Mr. Moog: Well I think in this case, With great respect,

Mr. Shibley: Just a minute, Mr. Moog.

Mr. Moog: That isn't putting through. This refers to a commission of five per cent on \$20 million, if I read it right at the moment, I wouldn't be putting through money. That would I think, on the top section at least, deal with the fact that we would just borrow \$20 million in Switzerland as one possibility. That is how I read the document.

Mr. Shibley: Well, Mr. Moog, how do you reconcile

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M.F.

H - 1529 - 2

(Mr. Shibley)

that answer with paying Ames a commission of \$300,000?

Mr. Moog: For the balance, I suppose.

Mr. Shibley: Mr. Moog, I would ask you to reflect carefully on that answer. The whole of the content of this break-out ~~money~~ seems to have to do with funding the project with Swiss money, and I put it to you if you were talking about a commission of \$300,000 to Ames, it was a markup that was going to be paid to Ames for putting through Swiss money?

Mr. Moog: No, no, no.

Mr. Shibley: When I say Ames, I mean the principal that it was acting for.

Mr. Moog: No, no, you are confusing me now. No, no, no, I want to read the rest of this.

Well the only thing that doesn't make sense is this \$1.1 million fees for Switzerland. That should be in that case, if it was all of it, and I am not trying to reconstruct my thinking, it should be more, that is all, it should be two million something. You see as a matter of fact -----

Mr. Shibley: Well it is an interesting comment on it though.

Mr. Moog: -----something comes to my mind. I think at that time, I figured that building might run as high as \$50 million, and I think what I am dealing with - and that is where the \$1.1 comes from - it comes back to my mind right now, is a total of \$50 million, and half of that, ^{if} it was arranged in Switzerland, would be about \$1.1 million, would have a fee applicable of \$1.1 million. I think that is how I read that right now.

Mr. Shibley: Unless that is 4.1?

Mr. Moog: Oh no.

Mr. Shibley: It is not 4?

Mr. Moog: Oh no, it doesn't add up then. If it was ~~4.1~~ 4.1 the 8.9 on the bottom would be wrong. You see what I mean?

Mr. Shibley: All right. But let's go back to the \$300,000 you were going to pay to Ames for arranging this thing. Ames was

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3.40-3.45 p.m.
M.F.

H - 1529 - 3

(Mr. Shibley)

the financial house which was arranging for another institution to put up the ultimate financing for Hydro and that is the company with which you still have a commitment. And you incorporate -----

Mr. Moog: I don't think we dealt with that company at that time. I am not sure, but I don't think we did. I just don't know what time this document, or this little scribbled thing was done.

Mr. Shibley: I know. All right, but Mr. Moog, we will pinpoint times in another way and in another time. At the moment, then, even if you were not dealing with that institution, I take it you talked to Equitable about a put-through of Swiss funds in June, July, August and September?

Mr. Moog: Well now, I haven't said that.

Mr. Shibley: Well in that period of time.

Mr. Moog: I said that I talked to them, in that period I talked to them, right. Not in March necessarily.

Mr. Shibley: ~~That is all right, but I don't think we dealt with that company at that time.~~

Tape H - 1530 follows

July 30, 1973
3.45 - 3.50 p.m.
M.R.

(Mr. Moog)

~~...if you are in that period, I think I told to them~~

~~Mr. Shibley: Right.~~

~~Mr. Moog: Not necessarily.~~

Mr. Shibley: I could tell you the first

correspondence which you provided to me, and I'm not sure that you have anything more precise than this, of your communications with Ames is September 28, 1972.

Mr. Moog: Have I got that here? Oh, yes.

The letter to Ames, right.

Mr. Shibley: That's right.

And you carried forward with Ames thereafter it appears into November and December of that year. Is that correct?

Mr. Moog: I carried through in November and December, that's right, with Ames.

Mr. Shibley: Yes.

Mr. Moog: That is correct.

Mr. Shibley: Now, just getting back to this memorandum: Regardless of who the principal was, I gather at this time, which would be some time after September 23, 1972, you were talking to Ames about a put-through deal?

Mr. Moog: I didn't say that, Mr. Shibley, As I can reconstruct it I am talking about getting \$25 million in this case, presumably, from Switzerland.

Mr. Shibley: Then, why would you be paying Ames a commission ...

Mr. Moog: I've still got to get the other \$25 million, if I was to get \$25 million from Switzerland then I would still have to get the other \$25 million elsewhere. I think that's what I'm trying to reconstruct with you right now. Because on the bottom, if you look at the total, I've got a \$50 million total on the bottom left. This is what makes me analyse it the way I do right now.

Mr. Shibley: So, what you are telling us now then is that you anticipated paying Ames a commission of \$300,000

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M.R.

(Mr. Shibley)

for raising \$25 million ~~and~~.

Mr. Moog: For doing something for us.

Mr. Shibley: For raising \$25 million?

Mr. Moog: For raising \$25 million, yes.

Mr. Shibley: Your expected fee to them was

\$300,000 to raise \$25 million. Is that what you are telling us?

Mr. Moog: Yes.

Mr. Shibley: I see.

Mr. Moog: That's about one and a quarter per cent

which is - if they did it without our assistance, that's not an unreasonable fee.

Mr. Shibley: I understand. It's not an unreasonable amount for \$25~~0~~ million?

Mr. Moog: I would think that's a pretty good deal.

Mr. Shibley: Yes.

Mr. Moog: For us.

Mr. Shibley: Yes. \$300,000 for \$25 million is a pretty good~~de~~ deal.

Mr. Moog: For us.

Mr. Shibley: Is that correct?

Mr. Moog: I would think so.

Mr. Shibley: Yes.

Mr. Moog: If they came across with that money and we didn't have anything to do with it.

If we didn't have to engineer the deal, let's put it that way.

Mr. Shibley: By which you mean if you weren't funding it with Swiss funds?

Mr. Moog: No, I did not say that.

Mr. Shibley: I see. Well what do you mean?

Mr. Moog: I said if we didn't ~~draw~~ draw up the structure for the deal as we did in the final document, which is a very complicated structure.

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3:45 - 3:50 p.m.
M.R.

Mr. Shibley: Well, did you engineer, using your term, did you engineer this deal?

Mr. Moog: Which one?

Mr. Shibley: The one that you ultimately made through Ames.

Mr. Moog: I masterminded that deal, yes sir.

Mr. Shibley: Yes. And ~~that~~ you felt that \$300,000 would nevertheless

Mr. Moog: I paid ~~less~~ ^{less} less than that.

Mr. Shibley: You felt that \$300,000 was an appropriate fee?

Mr. Moog: Not when I engineered the deal, they wouldn't get any \$300,000, oh no.

Mr. Shibley: I want to have produced to you, Mr. Moog, a letter dated November 17, and before it's distributed to anyone, I'd like you to look at the letter because it does not, I believe, make any reference to the institution which provided the ultimate financing and therefore, without editing I would like to have the whole of it made an exhibit. Do you agree?

Mr. Moog: I agree -- I don't know.

Mr. Shibley: Yes. May we have that?
learned &

Mr. Moog: I have to talk to my counsel.

Mr. Shibley: All right. May we have that made the next exhibit, Mr. Chairman?

Mr. Chairman: ~~Wait~~ ^{It an exhibit} Wait a minute, just before you make

there is no name in there I take it?

Mr. Chairman: No.

Mr. Moog: That's fine.

Mr. Shibley: Now, this, I gather, is a letter evidencing the commission agreement that you ultimately made with

Mr. Moog: I wouldn't like to call it a commission, I would just like to call it a fee.

Mr. Shibley: All right. This was the arrangement

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M.R.

(Mr. Shibley)

to compensate Ames. Is that correct?

Mr. Moog: For whatever they did for us, yes.

Mr. Shibley: In respect of the financing?

Mr. Moog: In respect to the financing, that's correct. I don't know whether that's been even executed or not. Has it been, Bill? No, it hasn't been executed *I am just advised.*

Mr. Shibley: This is the only fee arrangement that you entered into with Ames, is it not?

Mr. Moog: Let's say ^{it's} this way. ^{It's} The only arrangement I've got with them ~~as~~ as to the amount. ~~At one time I~~
~~considered they ought to do a lot more work for us than just~~
~~what they have done so~~

H-1531 to follow

H 1531 - 1

July 30/73

3:50-3:55pm

C.B.

(Mr. Moog)

~~At one time~~ At one time I considered they ought to do a lot more work for us ^{at} than just what they have done so far *for the amount.*

Mr. Shibley: For the moment Mr. Moog, I just want you to record that this is the only arrangement you have with Ames to provide them with any kind of a fee for the services rendered in connection with the Hydro head office financing. Is that correct?

Mr. Moog: It is not this very arrangement set out in this letter, but I will say that I have an arrangement with Ames to pay them ^{the} amount mentioned herein.

Mr. Shibley: ON these terms?

Mr. Moog: I'm not so sure that these are the terms at all.

Mr. Shibley: Well, Mr. Moog.

Mr. Moog: I have to check that with Mr. ~~Coles~~ *Coles as to what we finally settled with them because ...*

Mr. Shibley: Do you have another document Mr. Moog?

Mr. Moog: No I don't think we have anything else in writing. Whatever we've got is here.

Mr. Shibley: I see, well it is ~~a~~ the only thing that's been produced to me and I took ~~see~~ this Mr. Moog, and correct me if I'm wrong, you notice at the end, "If this arrangement is acceptable to you, will you please sign the enclosed copy of this letter and return it to us."

~~Mr. Moog~~

~~Mr. Shibley~~

Mr. Moog: I'm advised there ^{is} nothing more in writing, I just

Mr. Shibley: So then Mr. Moog, to shorten it, this document reflects the only terms of any arrangement whereby you were going to compensate Ames for whatever they did for you

July 30/78

3:50-3:55pm
C.B.

(Mr. Shibley)

on the Hydro head office financing?

Mr. Moog: It certainly limits it to the amount.Mr. Shibley: Mr. Moog, you give me answers ^{like that} and it

makes me ask you another one.

Mr. Moog: Mr. Shibley, I'm not trying to be difficult,
I'm only saying this is not an agreement with them as to those
specific terms.

Mr. Shibley: All right, but just for the moment.Mr. Moog: Only to ~~the point~~ it is an agreement.

Mr. Shibley: Would you please just answer this one
question? Does this - is this the only document reflecting the
only terms for any kind of compensation from you to Ames for
services rendered referable to arranging financing for the Hydro
head office building?

Mr. Moog: There is no other document with A.E. Ames^s which
reflects...

Mr. Shibley: And no other arrangement?Mr. Moog: And no other arrangement, no sir.

Mr. Shibley: All right. Now let's go on with the
letter then, it says, "We refer to our several discussions with
you concerning the financial advisory services we have provided
and which you have asked us to continue to provide for you.

"Your acceptance of this letter will constitute an
agreement between us which provides for us to supply such
financial advisory services as you may reasonably require for the
four calendar years ended December 31, 197⁸."

"Our fee for these services for this period will not
exceed \$100,000 and will be payable annually based on the work
performed in each of such years.

"If this arrangement is acceptable please sign
the enclosed copy and return."

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3:50-3:55pm
C.B.

(Mr. Shibley)

Mr. Moog, I'd like to ask you how, if you anticipated in the memorandum which is exhibit 191, that you would pay Ames \$300,000 to arrange for \$25 million ~~in the~~ ^{worth of} funding, why Ames would accept a mere \$100,000 maybe, as a maximum, in other words, it says "will not exceed \$100,000" and why the terms of this letter should be predicated as they are, rather than as you owe us a fee of \$100,000 payable on such and such dates." Why are they talking about payment for financial advisory services?

Mr. Moog: We wanted to get more advise^c from them on matters of finance, that's all. We did not agree to pay them any more than \$100,000 as I've previously stated.

Mr. Shibley: Mr. Moog, are you telling them, that you were getting - Ames were accepting \$100,000 not ~~only~~ only for finding \$45 million for you?

Mr. Moog: I didn't say \$45, with great respect.

Mr. Shibley: Well, we will get to the amount in a

minute.

Mr. Moog: Oh I mean to the new one.

Mr. Shibley: Yes.

Mr. Moog: Right.

Shibley:

Mr. ~~Moog~~ You mean to say

Mr. Moog: Sorry about that, yes, ~~that~~ you are right.

Mr. Shibley: You mean to say Ames were going to accept

to accept, for finding \$45 million...

Mr. Moog: No, no, I didn't say they found us that money. I said we found the company we finally dealt with and Ames also knew of the company. It was a matter that we both sort of zeroed in on the same pocket of money and we made a deal.

W 1532 - 1

(Mr. MOORE)

~~the same pocket of money and we made a deal.~~

Mr. Shibley: Well, that's what I am interested in knowing. What was the pocket of money that was found?

Mr. Moof: You know the company. It's the letter. It's company "X".

Mr. Shibley: Well, Mr. Moeg, I am still trying to understand what you are telling this committee. Are you telling this committee . . .

Mr. Moog: Can I . . .

Mr. Shibley: Are you telling this committee - just hold on a minute - you earlier said that because you expected Ames to have to find you the balance of \$25 million, you expected to pay them a fee of \$300 thousand.

Mr. Moor: That was a ~~guess~~ supposition of mine
that that is what I might be stuck with.

Mr. Shipley: Yes.

MR. Moog: As a maximum.

Mr. Snibley: I see. It is firm \$100,000.

Mr. Moog: Well, not necessarily under these terms but they are going to get \$100,000.

July 30th, 1973

U 1552 - 2

3.50 - 3.55 pm
AA

(Mr. Shibley)

Mr. Shibley: Well, it goes beyond that. It goes beyond saying stretching it over ~~the~~ four years. It says . . .

Mr. Moog: And that we wanted more information from them if we needed it, so that we buy a lot of things that way in one strike.

Mr. Shibley: I see. So it is not just buying on the instalment plan because it says, "Our fee for these services for this period will not exceed \$100,000."

Mr. Moog: No. We have settled at \$100,000.

Mr. Shibley: But why should they be characterizing it as a fee for advisory services, which fee is not to exceed \$100,000?

Mr. Moog: Well, I think we did pretty well all of the work on that final deal and I think they are lucky to get this much, in my opinion.

Mr. Shibley: Well, Mr. Moog, I am going to put some very straight questions to you now.

Mr. Moog: Sure.

Mr. Shibley: You would agree with me, would you not, that a fee of \$100,000 to an institution such as Ames would indeed be a very low fee if Ames arranged \$45 million for this project.

Mr. Moog: If Ames did the whole work, I agree with you wholeheartedly, yes.

Mr. Shibley: Yes that's right. And you would agree with me that the normal procedure would be for Ames to set forth in very explicit terms that their fee would be "X" hundreds of thousands of dollars, in this case, probably as much as - well let's say at least \$300,000.

Mr. Moog: Now, Mr. Shibley, I want to go much further than that. I think at least a million.

Mr. Shibley: All right, a million dollars.
Thank you. That the normal fee for Ames would be one million

July 30th, 1973

H 1532 -- 3

3.50 - 3.55 pm

~~Harold G. Moore~~

AA

(MR. Shibley)

dollars.

Mr. Moog: Oh, I would think at least.

Mr. Shibley: Yes. And it certainly would not be payable on the basis that it wouldn't exceed \$100,000, depending on services. Is that right?

Mr. Moog: I agree with you.

Mr. Shibley: So that, in fact, there was something about this transaction. . . .

Mr. Moog: You bet you.

Mr. Shibley: . . . that required Ames to accept the kind of fee arrangement in exhibit 192, rather than stipulate for a fee of one million dollars.

MR. Moog: That's right.

Mr. Shibley: And I put it to you that you were still talking about Swiss funds . . .

Mr. Moog: No sir.

Mr. Shibley: ~~It~~ . . . as at the time you prepared your memorandum of 191, wherein Ames is referenced.

Mr. Moog: This is again one of my own doodlings, things I have in my head I sometimes put on paper. Sometimes I don't put them on paper. That has got nothing to do with the final deal. The reason Ames didn't get more than they got is a much different one. If you want me to explain it, I would be glad to.

Mr. Shibley: Well, I would be glad to have you explain it to me.

Mr. Moog: Wonderful. That would save us an awful lot of time. The reason Ames got as little as they did and you ~~no~~ doubt will call them in the box anyway, ~~included~~ and ~~you~~ get your answers from them, is that I masterminded the deal we have got now, which is a very ingenious deal, if I may say so, at a very favourable interest rate.

Ames didn't even know that a deal like that could

July 30th, 1973

3.50 - 3.55 pm

H 1532 - 4

AA

(MR. Moog)

be put together which is a high credit lease which I got with the assistance of Equitable Life. As a matter of fact, their counsel worked with us on it. My good friend in Equitable Life helped me on it and here again, I am now telling you all about financing, but there we are.

H 1533 - 1 follows

July 30, 1973
3:55 - 4:00 pm
JLP

(Mr. Moog)

~~And here again I am now telling you all about financing but there~~
~~was~~ ~~are~~ When I went with that structure, as well as with the
information on which company had ~~money~~, and talked to Ames, who ~~had~~
also talked to me at various times, ^{trying} ~~saying~~ to be helpful to us,
because, as I told you, I know one of their gentlemen extremely
well; he has been in our building for many years, and we have
become very good friends, ^I then we ^I think, gave Ames an education,
just like we gave our engineers an education. And ^{then} Ames got away
with being quite happy with the arrangement they've got because
we masterminded the deal. I myself masterminded the deal - with
the help of Equitable Life.

Mr. Shibley: Yes. Mr. Moog, you said, yourself, repeatedly,
you ~~do~~ do not like middlemen, do you?

Mr. Moog: Well, we did have to have them to the extent
of \$100,000 - is that a crime? I do not ~~think it would~~ ^{they did not} bring the
deal to me. I organized the deal and that's the whole point I'm
trying to make.

Mr. Shibley: Then why did you create a middleman even to
the extent of \$100,000, when it's contrary to your policy?

Mr. Moog: Because Ames also knew - just a moment, Ames
also knew about this money, so ^{then} ~~Ames~~ said it to us as we said it to
them, and there wasn't going to be any point in getting into any
hassle with Ames because the most important point was to ~~mail~~ ^{pay} that
money to us right then and there, and that ~~was~~ what we did.

MR. Shibley: Well, Mr. Moog, you _____

Mr. Moog: It is not a middleman situation, they did help
us to quite an extent and they went down with Mr. Coles and Mr.
Bradshaw of my company; I never even met the company we made the
deal with; Ames went down with ^{them} ~~Ames~~, so they had to be paid for
something.

Mr. Shibley: You just mentioned Equitable. Did Equitable
have something to do with the arrangements that Ames made?

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3:55 - 4:00 pm
JLP

Mr. Moog: Equitable gave me some of the tools which were vital for this deal, namely the high-credit lease; Ames never even heard about a thing like that until we talked about it; then we said, "Well, if we structured it this way, what do you think? We have a high credit, we have a lease ^{back} ~~to~~, we have a lease-purchase and there's the whole bundle." And that is when we cracked the pocket of money we finally found.

Mr. Shibley: Mr. Moog, it wasn't because the moneys that were being funded by the institution with which you and Ames were dealing was being funded out of Switzerland?

Mr. Moog: No Sir~~X~~, no Sir, no Sir.

Mr. Shibley: I see.

Mr. Moog: Three times and one hundred times I'll say it had nothing ~~to~~ whatsoever to do with it. I unequivocally make that statement again and again and again. My name is Moog and not Smith.

Mr. Shibley: I have heard you make the statement also today, Mr. Moog, that you never examined in detail the break-out of the arrangements to fund money in Switzerland.

Mr. Moog: This is not a detailed examination, that's a piece of ~~scuffling~~.

Mr. Shibley: I see.

Mr. ~~Shibley~~ Moog: Yes.

Mr. Shibley: This break-out is not what you consider a ^{detailed} break-out of the ~~break-out~~.

Mr. Moog: I hope the press has got that sheet and they can publish it, and if that is going to be an examination in depth then I think we run a pretty poor show.

Mr. Shibley: All right. You testified the other day that Equitable were looking for 8-1/2 to 9 per cent on ~~the~~ their money - is that right?

Mr. Moog: That's right.

Mr. Shibley: And that one reason you were considering a put-through deal was to get a lower rate of interest - is that right?

July 30, 1973
3:55 - 4:00 pm
JLP

Mr. Moog: I said I wanted to show them that other people in this world have money too and not just a few big ones in the United States.

Mr. Shibley: Mr. Moog, would you please ---

Mr. Moog: And I did talk to Mr. Keegan about the possibility of a put-through, yes I did.

Mr. Shibley: And the reason for a put-through is to get a rate lower than 8-1/2 to 9?

Mr. Moog: The reason for a put-through is to enable the company which loans me money to get money, that's all. Naturally it would be a rate which I could live with. I didn't like 8-1/2 to 9, and I couldn't build the type of building I'm building right now with that sort of money.

Mr. Shibley: The reason for a put-through deal is so that you could get money at less than 8-1/2 to 9 per cent? Could you answer that yes or no?

Mr. Moog: Well, if I would be able to get that money from Switzerland, where they then could loan me money back, sure it would be lower.

Mr. Shibley: That's right. And what is the rate of your permanent financing?

Mr. Finlayson: Mr. Chairman, I would ask for a specific ruling on this because you know my reasons and if this committee is prepared to take the responsibility for ordering the witness to answer it, ~~that is~~, he'll answer the question, but I would ask for a specific ruling as to whether he's required to answer that question.

Mr. Chairman: Gentlemen of the committee, I am going to rule that that is a proper question under the circumstances.

Mr. Shibley: What is the rate of your permanent financing?

Mr. Moog: 8 per cent.

Mr. Shibley: And I put it to you, Mr. Moog, that the reason your rate is 8 per cent, rather than what was the going rate of 8 1/2 - 9 per cent, again I suggest to you that it was because of how you engineered this transaction.

July 30, 1973
4.00 - 4.05 p.m.
M.R.

(Mr. Shibley)

~~to 9 per cent. Again, I suggest to you that it was
because of how you engineered this transaction~~

Mr. Moog: That is quite right. And the way
I explained it just a few minutes ago.

Mr. Shibley: And I have to ask you this question:
Was part of that engineering that Swiss funds would be put
through?

Mr. Moog: No, sir. Once more, no, sir!

Mr. Shibley: Why would the institution take
a rate - first of all, is it not correct that when you are
dealing in sums of this magnitude one-eighth of a per cent
is meaningful?

Mr. Moog: Pardon me? I just was so upset I
didn't hear this.

Mr. Shibley: I say, when you are talking of sums
of this magnitude, one-eighth of a per cent is meaningful?

Mr. Moog: You bet it is.

Mr. Shibley: Yes. And a quarter even more so?

Mr. Moog: That's right, and a half more so yet.

Mr. Shibley: Yes, a half a per cent is a very
meaningful differential?

Mr. Moog: Absolutely.

Mr. Shibley: Well, will you please explain then
how you engineered an eight per cent rate and only \$100,000
commission on the ...

Mr. Moog: Because I am bloody good at it.

Mr. Shibley: I see. And it has nothing to do
with your discussions right up till September?

Mr. Moog: No, sir, it hasn't.

Mr. Shibley: Of a put-through?

Mr. Moog: Right.

Mr. Shibley: Did you ever discuss with Ames a
put-through deal?

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4.00 - 4.05 p.m.
M.R.

Mr. Moog: I can't recollect that and I don't think I did. I discussed many things with the gentleman from Ames but I don't think so.

Mr. Chairman: We will recess for 15 minutes.

H-1535 to follow

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4.25-3.30 p.m.
M.F.

H - 1535 - 1

Mr. Chairman: Ladies and gentlemen, I call the meeting back to order, please.

Mr. Bullbrook: Mr. Chairman, if Mr. Shibley intends to leave the Ames document, exhibit 190, I would like to ask some questions about it.

Mr. Chairman: All right, that is fine. Just in the statement that was typed up there are two typographical errors. It should be -- that is the statement I read to the committee -- it is section 9 (1)(^b) rather than (g), (b) as in Baker, and in the inset part, second last line of the inset part, "in which case the tribunal may hold". So I just draw those two to your attention. Yes, if you would proceed, Mr. Bullbrook?

Mr. Bullbrook: Yes, I want to forget for a moment the possibility of a put-through arrangement, and I want to question the witness on the aspect of a high-credit lease, but I don't want to go into detail, Mr. Chairman, on the high-credit lease. I think it is incumbent upon counsel to ~~ask~~ take us through that.

As I understand your evidence, the basic feature of ingenuity in connection with arranging the financing was the high-credit lease?

Mr. Moog: I think that was the major portion of it, yes.

Mr. Bullbrook: I ~~would~~ want to ask you who first devised a high-credit lease concept?

Mr. Moog: That goes into history, Mr. Bullbrook. I don't know whether -----

Mr. Bullbrook: Oh, I am sorry -- ~~in~~ in relation to the ultimate financing? I am sorry, I don't mean philosophically, I mean as it relates to this transaction.

Mr. Moog: It was suggested to us by counsel of Equitable Life.

Mr. Bullbrook: It was Equitable Life who first conceived it?

Mr. Moog: That is right.

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M.F.

H - 1535 - 2

Mr. Bullbrook: I take it from your response previously that the high-credit lease method of handling this financing, although ingenious, was not novel?

Mr. Moog: Well the combination of the high credit, the lease-back, the lease-purchase, the building lease, all the documents as they are in this big red book, the 200-page book, I think the combination of those, to my best knowledge, has never been done before. I stand to be corrected on that; not to my knowledge.

Mr. Bullbrook: And so your evidence is that it was Equitable Life who first put together this package?

Mr. Moog: Well no, they didn't put the package together.

Mr. Bullbrook: All right.

Mr. Moog: We thought out the package, but they gave us that one instrument, the high-credit lease, which ^{we} ~~was~~ used as part of the package.

Mr. Bullbrook: Yes. And I want to ask you whether you were still contemplating being able to use Equitable Life as either part or all of the ultimate fund for financing this project when you discussed with them the possibility of the high-credit lease?

Mr. Moog: Oh yes, sir, you are quite right, I ~~would~~ ^{would} ~~like~~. As a matter of fact I would have loved to do business with them. I know them all very, very well and it would have just made things very easy for us if they could have done the lending to Canada, ~~and~~ ^{and} it wouldn't have been subject to withholding tax, which really is ~~what~~ what -----

Mr. Bullbrook: Yes, I know our counsel is going to get into that with you also, at least I feel he will, and I don't want to tread upon that. I am really interested in that aspect so that basically it was while dealing with Equitable Life that the high-credit lease -----

Mr. Moog: Emerged.

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M.F.

H - 1535 - 3

Mr. Bullbrook: Emerged. ~~xhighxxxxxxxxxxxx~~

Mr. Moog: Right.

Mr. Bullbrook: In effect. Now, during the course of those discussions with Equitable Life, do I take it to be your evidence that at the same time you had discussed with at least a representative of A. E. Ames and Company their involvement in this total financial package?

Mr. Moog: Well, this gentleman I have dealt with in A. E. Ames I consider as rather - I don't really look at the company as much as ^{at} the individual. I have discussed many times financial philosophy, economic conditions and other things with him and he, himself, had talked to me on and off about financing in prior years even. So in the case of Equitable I would not have used Ames at all, no.

Mr. Bullbrook: No. So the discussions - would it be fair to characterize your discussions with this gentleman -----

Mr. Moog: Unless that - pardon me - unless that Equitable insisted for some reason unbeknownst to me that they are to use the house to put something through.

Mr. Bullbrook: Did they?

Mr. Moog: No, they didn't.

Mr. Bullbrook: They didn't?

Mr. Moog: No, they did not.

Mr. Bullbrook: So discussion with A. E. Ames, or the gentleman from A. E. Ames, at that time were so to speak of a personal nature because of your private - previous ---

Mr. Moog: Yes.

Mr. Bullbrook: Would it be fair to say that if there was any financial remuneration available from using a house, that you would like to feel ^{A. E. Ames} -----

Mr. Moog: I would use A. E. Ames, no question about it.

Mr. Bullbrook: Because of that association?

Mr. Moog: ^{Because of that association,} Right, quite right. And ^{also} as I have a great

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M.F.

H - 1535 - 4

(Mr. Moog)

deal of respect for this gentleman as a person.

Mr. Bullbrook: Right. You might not wish to answer this question. Have you in point of fact dealt with A. E. Ames in connection with raising funds?

Mr. Moog: Only in this one instance.

Mr. Bullbrook: Only in this instance?

Mr. Moog: Yes. This gentleman joined A. E. Ames only a few years ago. As I said, at one time we had considered hiring him ourselves, for our team. He is that good.

Mr. Bullbrook: I tell you, I want to put it to you quite frankly that I find the wording of exhibit 190 ~~and~~ forget about a put-through for the moment ~~I find~~ it very strange.

Mr. Moog: Is it 192, Mr. Bullbrook?

Mr. Bullbrook: Do I have the wrong - November 17th, 1972?

Mr. Moog: Mine says 192.

Mr. Bullbrook: I apologize. The examination was worth while in that respect. I find the wording very, very strange in this respect, that the only two alternatives that I can see, and bear with me, ^{are these:} ~~underwriting~~ Either this type of ~~underwriting~~ ^{underwriting} house is paid on a normal commission basis, ~~for~~ ^{or} assisting in the arrangement of funds, or they are not inv^olved at all.

Tape H 1536 follows

H 1536 - 1

July 30/73

4:30-4:35pm
C.B.

(Mr. Bullbrook)

~~is paid on a normal commission basis for assisting in the
arrangement of funds or they are not involved at all~~

I put it to you sir that you don't need financial
advice from A.E. Ames and Company.

Mr. Moog: I've worked with this particular gentleman
for quite some time, and I think in the case of this company
we are now dealing with, who we have never dealt with before,
I considered it quite important that ⁹reputable financial house
had its name associated with the transaction.

Mr. Bullbrook: With the transaction.

Mr. Moog: Yes.

Mr Bullbrook: Well, did the ultimate lender, did
that company insist on A.E. Ames being involved?

Mr. Moog: Mr. Bullbrook, I am now going to state
something which I know will be news to everybody around here,
I never met with that company myself.

Mr. Bullbrook: Well, that doesn't really answer
the question.

Mr. Moog: I don't really know. I don't know at all.

Mr. Bullbrook: Your evidence is, of course, that A.E. Ames
met with the company, you know this.

Mr Moog: Yes, that's right. ~~45~~ ⁴⁶ two men of Canada
Square, that is our vice-~~president~~ president of finance and our
solicitor, went down I believe with ⁴⁷ a gentleman from
A.E. Ames to see the company.

Mr. Bullbrook: You have no knowledge as to whether
the ultimate ~~lender~~ ^{lender} insisted that A.E. Ames be involved
in this?

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4:30-4:35 pm

C.B.

Mr. Moog: I would think since A.E. Ames also introduced them in a sense. We knew about them, A.E. Ames knew about them, I would think it would be good business not to alienate anything at all but to rather be sort of united.

Mr. Bullbrook: Mr. Moog, that is my entire hangup right there.

Mr. Moog: Yes.

Mr. Bullbrook: You will have to bear with me as my colleagues on the committee are. You are not saying under oath that it was A.E. Ames that introduced you to the ultimate lender?

Mr. Moog: Well, I knew about the company from Equitable. I had not made a personal contact to that company. A.E. Ames knew about that company out of their own resources, and I had the choice of either dealing with that particular company, or Equitable ~~which~~ also suggested to have me meet a group of six midwestern companies who were joining forces at the time, ~~and~~ when we were very ~~much~~ much under pressure to complete a ~~deal~~ ^{and} ~~particular~~ ^{particular} company which is, well, a company in my opinion of very high repute, and A.E. Ames stated that they knew somebody in that company I felt it was very advisable to go right along provided we could still mastermind the deal ourselves and have A.E. Ames sort of assist us in their knowledge of the company.

Mr. Bullbrook: And you say in effect that \$100,000 is not an undue reward for such personal involvement?

Mr. Moog: Well I would ~~think~~ ^{in a normal deal} ~~think~~ ^{figures} like \$45 million, \$100,000 is very little.

Mr. Bullbrook: I recognize that in the normal circumstance where A.E. Ames would be an instrument in securing the funds. But now you've told us...

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4:30-4:35pm

C.B.

(Mr Moog: Well let me put ^{like this} it just makes things go that much smoother if a company like A.E. Ames ^{which} has dealt with this particular company before, also stands behind us and says "we know Canada Square, we know Mr. Moog, they are fine people." Just as Equitable Life would make that statement. I think that would help ^{and} there is, well if you work as a team I think it is much, much easier; \$100,000 certainly didn't bother me at the time to get that sort of financing.

Mr Bullbrook: Your evidence now is that it was Equitable Life that brought your attention to this pocket of money.

Mr. Moog: They told me about it.

Mr. Bullbrook: Right, they told you.

Mr. Moog: They told me about it, but at the same time A.E. Ames ~~also~~ mentioned also this very same company, and asked whether they could not assist us.

Mr. Bullbrook: Was this subsequent to A.E. Ames, I'm sorry, subsequent to Equitable Life advising you about this company?

Mr. Moog: Well, if you deal in amounts like \$45 million, there are very, very few companies in the entire world who ~~can~~ can handle that sort of financing, and when you sort it out it is ^{between} ~~among~~ a few of the very big ones usually, and we were very thankful to have A.E. Ames also have good connections with that company. So why not use those connections in addition to ~~having~~ having an introduction, which I could have had easily from Equitable.

Mr. Bullbrook: Well now that's....

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4:30-4:35 pm

C.B.

Mr. Moog: I didn't use ~~Equitable~~ Equitable, that maybe
is your point Mr. ~~Bullbrook~~ Bullbrook.

Mr. Bullbrook: That's my very point.

Mr. Moog: Right, I did not use...

Mr. Bullbrook: You are now telling us something
that you haven't before.

Mr. Moog: No, ~~because~~

Mr. Bullbrook: You are saying in effect...

Mr. Moog: No, I did not use the introduction from
Equitable which I could have had.

Mr. Bullbrook: You didn't.

Mr. Moog: No I did not.

Mr. Bullbrook: You used A.E. Ames to make that...

Mr. Moog: I used A.E. Ames to make that contact
because I thought that was advisable at the time.

Mr. Bullbrook: I believe your evidence to be that
in effect you had a scheme of some ~~kind~~ ingenuity and attractiveness... ^{on}

Mr. Moog: Right.

Mr. Bullbrook: ~~and~~ ^{and} you had to find a pocket of money...

Mr. Moog: Right.

Mr. Bullbrook: to put that together, to ~~weave~~ ^{weave} it with,
right?

Mr. Moog: Right.

Mr. Bullbrook: And you had heard from Equitable Life
about a pocket of money, ~~and~~ ^{if} you ~~used~~ ^{can} that phrase...

Mr. Moog: Two of them, as a matter of fact, this
was one and the other I never even got ~~to~~ ^{to} talking to.

~~Mr. Bullbrook: He was looking at them~~
~~directly you decided~~

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(Mr. Moog)

...and as a matter of fact this was one and the other one
I never even got to talking to.

Mr. Bullbrook: ~~rather~~ ^{RATHER} (than approaching them

directly, you decided that you ~~may~~ ^{should} use Ames to?

Mr. Moog: Right.

Mr. Bullbrook: Is it fair to say then that
you are compensating ^{HE} Ames for that approach ~~that~~ ^{THAT THEY MADE?}

Mr. Moog: I think that is correct, Mr. Bullbrook.

Mr. Bullbrook: Right. From your evidence in
effect, you have agreed to give them \$100,000?

Mr. Moog: I have agreed to give them \$100,000
no question about that.

Mr. Bullbrook: Right. And it has nothing to do
with advice, Mr. Moog. I ...

Mr. Moog: I only stretch it over four years
in this case.

Mr. Bullbrook: That might well be.
That might well be but for your own particular purposes,
be they tax or otherwise ...

Mr. Moog: Oh, now, Mr. Bullbrook, please don't
ask me on tax profits.

Mr. Bullbrook: All right.

Mr. Moog: ~~that's right~~ BUT I THINK WE DID TO SOME EXTENT

Mr. Bullbrook: But for your own particular purposes,
you wanted to stretch this over four years?

Mr. Moog: That's right.

Mr. Bullbrook: Okay. But the fact of the matter is
that \$100,000 is because of the fact you felt that with Ames'
reputation ...

Mr. Moog: Correct.

Mr. Bullbrook: ...because of prior involvement
to your knowledge, with the ultimate lender, that it would
be to your advantage to have Ames involved?

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Mr. Moog: Oh, I agree with you.

Mr. Bullbrook: Right.

Mr. Moog: I agree with you very much, yes.

Mr. Bullbrook: Because I am going to close by saying that you really don't need a heck of a lot of financial advise. You are probably as knowledgeable of markets and economy as anybody at A.E. Ames, Mr. Moog.

Mr. Moog: Mr. Bullbrook, we can always learn more. Once I say that, then I am not as knowledgeable as I think I am.

Mr. Bullbrook: Well, Mr. Moog, you can pick up the phone and phone many friends in Switzerland I'm sure ...

Mr. Moog: Yes.

Mr. Bullbrook: ...who are extremely knowledgeable in the financial market?

Mr. Moog: Yes, that's true.

Mr. Bullbrook: Well, I just wanted to elicit that from you because I want to tell you that I felt that the \$100,000 had nothing to do with financial advice. It was an ordinary business dealing that you had, that you felt an obligation to this underwriting house to compensate them for their involvement. Is that right?

Mr. Moog: I think that is basically correct, Mr. Bullbrook.

Mr. Bullbrook: And there ~~is~~^{are} no ulterior motives in those questions. I just wanted to clarify that in my mind.

Mr. Deans: Am I correct in assuming that you are going to find out what a high credit lease is?

Mr. Bullbrook: Yes. I would think so.

Mr. Deans: You are. That's fine.

Mr. Shibley: I just want to complete ...

Mr. Deans: The whole conversation is ...

Mr. Shibley: ...though in the area that Mr.

Bullbrook had asked and that \$100,000 for services rendered would compare with as much as one million dollars if A.E. Ames had

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Mr. Moog: Had done all the work.

Mr. Shibley: ^{had done} ~~done~~ all the work.

Mr. Moog: I agree with you, Mr. Shibley.

Mr. Shibley: If you hadn't ...

Mr. Moog: Yes, sir.

Mr. Shibley: ... participated in bringing about
whatever arrangements funded this transaction?

Mr. Moog: Yes.

Mr. Shibley: Is that correct?

Mr. Moog: That is correct.

Mr. Bullbrook: I want to ask one more question.

Did Equitable receive any remuneration for their involvement?

Mr. Moog: No, they didn't. I might take the
gentleman out for sales or ...

Mr. Shibley: I don't know whether I ever got
around to asking you, because I was leading a different
line of questioning with you; but what is your explanation,
Mr. Moog, for having obtained \$45 million at 8 per cent,
as compared with the going rate of 8.5 to 9, in light of your
own answers that even an eighth of a point is a very material
differential?

Mr. Moog: I really thought I answered that,

Mr. Shibley. Did I not?

Mr. Shibley: I'd like you ...

Mr. Moog: I thought I ...

Mr. Shibley: I can't remember whether I've really
asked you it.

Mr. Moog: I think you did ask and I think I answered
it.

Mr. Shibley: Well, I'd like you to answer it for
me again, if you will.

Mr. Moog: I think it's the structure of the entire
deal. It's the way the deal breaks down into the high credit
lease, into the building lease, the lease-back and the whole
documentation, which was very attractive to a company which we
found by hard search and who had at that time that amount of

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M.R.

(Mr. Moog)

money available. Now, if we wouldn't have approached them I suppose, at that particular time, and wouldn't have acted fast and weren't ready with all the documentation, which we presented to them, I don't think we would ever have had that money.

Mr. Shibley: Is there a difference between your ability to deal with Equitable and your ability to deal with this other institution?

Mr. Moog: Well, after this deal, I think I can, ~~but I don't know~~.

Mr. Shibley: At that time?

Mr. Moog: At that time I did not know that company personally.

Mr. Shibley: Was there any circumstance that prevented you from doing the same deal with Equitable?

Mr. Moog: I thought I made that quite clear. Equitable could not loan us the money because they would have had to pay withholding tax. That particular company does not have a withholding tax problem. And therefore, we had a deal with that company rather than with Equitable.

Mr. Shibley: Well, is that - why has that particular company not got a withholding tax?

Mr. Moog: Their earnings in Canada are large enough that they can offset.

Mr. Shibley: I see. Whereas Equitable was not?

Mr. Moog: No. Is that right, Bill?

Mr. Shibley: Good.

Mr. Shibley: ~~If Equitable had not~~...

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JLP

(Mr. Shibley)

~~They were affected I see. Whereas Equitable was not~~

~~Mr. Moog: No.~~

~~To that right, Bill?~~

~~Mr. Moog: Good.~~

Mr. Shibley: If Equitable had not had a withholding tax problem that you could not overcome,

Mr. Moog: And if they would have had at that moment that money available, three years hence, I would have in all likelihood gone no further because my plan in the beginning was just to whip Equitable in shape and then make a deal with them.

Mr. Shibley: Right. And to do a put-through with them if...

Mr. Moog: No Sir.

Mr. Shibley: Don't get excited Mr. Moog. Your June 21 memorandum said you were going to do a put-through with them.

Mr. Moog: Oh, it has nothing to do with it anymore. If Equitable had the money themselves, without having to get it elsewhere, then they would have loaned me the money because they know me well enough.

Mr. Shibley: I am wondering why you get so excited when I ask you

Mr. Moog: Because I have heard it so often, and often and often; I've made it absolutely clear that there isn't any put-through, there isn't any Swiss myth; I don't know how many times I have to say it.

Mr. Shibley: I'd like to come back, Mr. Moog, to what is Exhibit 191, and one of the members of the committee has given me some assistance in respect to something, or at least has asked that it be cleared up. On the upper left side, there's 41 million - do you see that?

Mr. Moog: Yes.

Mr. Shibley: And then on the right side, about a quarter of the way down, is the figure 51.1, I think.

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Mr. Moog: I think it's 51 million. I think that's just the way the word million starts.

Mr. Shibley: I see. If you take $41 + 8.9 + 1.2$ - does that not come to 51 million?

Mr. Moog: Where do you get all of that?

Mr. Shibley: 51.1.

Mr. Moog: I'm not...

Mr. Shibley: $41 + 8.9$ would be...

Mr. Moog: Yes, that's makes around 50.

Mr. Shibley: It would make an even 50, right?

Mr. Moog: Yes.

Mr. Shibley: And if the 1.2 is a, pardon?

Mr. Finlayson: No 41.9

Mr. Shibley: I'm sorry; it makes...

Mr. Bullbrook: 41.9

Mr. Shibley: 49.9, and if you add 1.2 to that you get 51.1. What I've been asked to ask you about is whether that figure of 1.2 is a significant figure, having regard for the way it totals up in respect of those other two figures, and, if so, what is the explanation?

Mr. Moog: I don't even know where it comes from. Maybe the gentleman who has asked the question...

~~Mr. Shibley:~~

Mr. Shibley: You see what I've been asked to put to you is this - if you include that 1.2...

Mr. Moog: Which 1.2 - I want to know which 1.2 you are referring to?

Mr. Shibley: Above the 8.9

Mr. Moog: Above the 8.9? Oh...

Mr. Shibley: That 1.2.

Mr. Moog: Oh, that's one; oh I am sorry; well, I think that is part of my...

Mr. Shibley: Just hold ~~on~~ with me for a moment. If you include that 1.2, then you are up to a total ^{of 10.1} instead of 8.9 you've got a total of 10.1 - is that correct?

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Mr. Moog: Let me try to reconstruct my own scribbling at the time. As a matter of fact, I think I made a mistake in that. I think that should be 9.9 if you add all these figures up. 5 and 3 is eight and 9, nineteen; oh no, that's not right. No, the 8.9 is right.

Mr. Shibley: Yes, and if you take your 8.9...

Mr. Moog: No, it doesn't include the 1.2, I'm sorry.

Mr. Shibley: No, it does not. And if you add 1.2 to it, and you add another...

Mr. Moog: Well, ^{is} if I add - 8.9/millions; if I add that 1.2, that would be \$120,000

Mr. Shibley: Oh no, listen to me for a moment. ^{If you} ~~you~~ took 8.9 and added 1.2, and 41, you would get 51.1 million dollars. And there is a 51.1

Mr. Moog: I think that ^{says} ~~that~~ 51 million; on my copy at least, Mr. Shibley, maybe that will assist you, ~~there's the~~

(Tape H-1539 follows)

(Mr. Moog)

~~on my copy at least, Mr. Shibley, maybe it would assist you,~~
there is the "1" of the "million" still on it.

MR. Shibley: In any event, whether it is
51 million or 51.2, what I have been asked to ask you about
is whether that 1.2 is a significant figure, going to the totalling
of a 51-million-dollar figure.

MR. Bullbrook: Mr. Shibley, that is not 1.2.
I don't want to be a handwriting expert, but I would put to
you this and ask Mr. Moog to refresh his memory.

MR. Moog: Please

MR. Bullbrook: Is that not 42?

MR. Moog: Do you know, I think you are right.

MR. Bullbrook: Does he not extrapolate? Does
he not take his cost of this building at 41 and decide, "I'd
better be careful and make it 42."

MR. Moog: Yes, I have the same 42 on the bottom.

MR. Bullbrook: And he says ~~that's~~ ^{That's} nine, in

effect. And \$51 million is my total package

MR. Shibley: Thank you very much and thanks for
your assistance, Mr. Bullbrook. I believe that that's correct
and the reason why I think it is correct is because on the
lower left, it also says 42.

MR. Bullbrook: Yes, that's right.

MR. Shibley: I see. So you were working ~~on a figure~~ ^{20,000}

MR. Bullbrook: When you get into ~~figures~~ ^{figures} that
high, you can toss on a million ...

MR. Moog: What's a million?

MR. Bullbrook: ~~Just to make sure that~~
you don't lose anything.

MR. Moog: Right.

MR. Bullbrook: That's right.

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AA

(Mr. Moog)

Mr. Moog: I agree with you.

Mr. Bullbrook: Absolutely right.

Mr. Moog: Oh, yes I do

Mr. Shibley: ~~So~~ what you are saying is you had on the upper left \$45 million as the cost of the building and you were building in a figure of \$42 million, for a total of \$51 million, including all your cost of financing?

Mr. Moog: I think that's correct, Mr. Shibley, yes.

Mr. Shibley: OK. And as Mr. Bullbrook says, you just added on an extra million dollars to ~~the~~

Mr. Moog: Give or take a million, right. At that stage certainly. ~~no more~~

Mr. Shibley: There was a famous Liberal who said, "What's a million?"

~~Oh, you have really?~~
Mr. Moog: ~~Yes, there's really, what's a million.~~

Mr. Shibley: All right.

Mr. Genest: And a great man.

Mr. Chairman: We will have no political comments from Mr. Genest.

Mr. Bullbrook: He should now resign as counsel for Hydro.

Mr. Shibley: All right. I would like to go down ~~this~~ this memorandum with you, Mr. Moog. It says, "University Properties, ~~in brackets~~ owned by Hydro, hence government agent)." What's all that about?

Mr. Moog: Oh, at one time, we had a scheme, and it was really again - ~~as I say, they~~ I say ~~they~~ have to be so awfully careful - we had an idea, a brainwave, if ~~you~~ you wish, that in order to get by without, or to alleviate the withholding

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AA

(MR. Moog)

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tax problem, we would have a company which would be, in effect, owned by Hydro and if we could ever get that sort of a thing going, then we wouldn't have that withholding tax problem and then I think we would have been in very good shape with Equitable Life, for instance.

And I think the name I had in my mind at the time, ~~and~~ this was - well, I don't know when I had that name really or when I put down University Properties as a name. That's all. It never got any further than this sheet of paper.

Mr. Shibley: I see. There is no such company?

Mr. Moog: There is no such company. It is just ~~is~~ I had the idea in my mind and I put it down on a piece of paper.

Mr. Shibley: I wondered why you have it here owned by Hydro.

Mr. Moog: Well, it would have - that was an idea I had, like I had many ideas about the financing of this project.

Mr. Shibley: All right. And then it says, "borrows at 6-1/2%." Is that right?

Mr. Moog: Yes 6-1/2 per cent in form of a debenture, I think. I made that relative to borrowing in Switzerland, if that was the case ~~and~~ ^{the idea} I thought that Hydro might as well borrow directly that way, ~~for~~ at least a company owned by Hydro.

Mr. Shibley: So a company owned by Hydro would borrow money in Switzerland at 6-1/2 per cent. Is that correct?

Mr. Moog: That's right.

Mr. Shibley: And then you have

Mr. Deans: Is that a 6?

Mr. Shibley: Pardon?

Mr. Deans: Is it really a 6?

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H 1539 - 4

AA

(Mr. Shibley)

Mr. Shibley: No, it is 6-1/2.

Mr. Moog: I think 6-1/2 - maybe ^{you're} right, Mr. Gaunt.

Mr. Shibley: No, it is 6-1/2.

Mr. Moog: Even though that may throw up another theory but _____.

Mr. Gaunt: No, I didn't have any ^{theory}.

Mr. Deans: It looks like an 8.

Mr. Shibley: No, it's 6-1/2 per cent: ^{in form} ~~per cent~~ borrows at 6-1/2 ^{per cent} because it makes it clear - then Canada Square - that's "CS properties" _____.

Mr. Moog: Right

Mr. Shibley: _____ receives funds as mortgage at 6-3/4 per cent from University Properties. "

Mr. Moog: Yes.

Mr. Shibley: So there would be a ^{markup} ~~xxxxx~~ of a quarter point on the relending from the Hydro company and Canada Square. Is that correct?

Mr. Moog: That's right.

Mr. Shibley: I am producing to you a memorandum, and again I would ask it only be produced to you and your counsel at this time

H 1540 - 1 follows

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4:50-4:55pm

C.B.

(Mr. Shibley)

~~to you a memorandum and again I'd ask it only be produced~~
to you and your counsel at this time because I want to be
satisfied there is nothing in it that is worrisome. It's
dated September 8, and it appears to be a memorandum prepared
by Mr. Bradshaw^{s/}. Do you recognize that document?

Mr. Moog: Yes I think I've seen that before.

Mr. Shibley: The only part of it that concerns
me is the handwritten notations on the top. Perhaps you can
satisfy yourself with your counsel that it doesn't indicate
who the ultimate funding company was.

Mr. Moog: I can hardly read what it ~~says~~ says
anymore.

Mr. Finlayson: Mr. Shibley, I don't ^{know} what you propose
to do with this. But surely you are not suggesting that this
isn't a privileged document.

Mr. Moog: I don't think that was...

Mr. Shibley: Well if it ever was a privileged document
it was waived when the documents were produced to me, Mr.
Finlayson.

Mr. Finlayson: Well I'm very sorry, but I can't
~~get~~ get a hold of Mr. Laidlaw until he gets back from overseas
this. But my people tell me ~~this~~ was produced to you in confidence
and that there was no waiver of privilege. Now I don't want
to get into a controversy. I didn't give it to you, so I can't
say on what conditions it was handed to you. But I'm certainly,
I can't agree with you that this was given to you on the basis
of what I've been told by people who are here now. I'd like
to be able to speak to Mr. Laidlaw about that. But unfortunately
I can't get a hold of him

Mr. Shibley: Well, Mr. Finlayson you know the letter
that he sent me enclosing ~~these~~ narratives. When we sent over
the files, the files - those files that we did get were just

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C.B.

(Mr. Shibley)

handed to us and a receipt asked for which is an exhibit. There was no understanding of privilege or anything else referable to any selected documents in these files

Mr. Finlayson: Well I'm going.....

Mr. Shibley: And ~~I~~^{am} presuming that those files for which you were intending ~~to claim~~ to be claimed or anything else are either in the hands of Mr. Bradshaw or were never produced to me at all. Like the one we had such a row about.

Mr. Finlayson: Mr. Shibley, you see I don't want to get in a discussion with you, I'm told that there was a telephone conversation between you and Mr. Laidlaw and I was not present.

Mr. Moore: That is what I was told.

Mr. Finlayson: And I'm just in this unfortunate position, I can only accept what I'm told by my client, I have no way to check it again.

Mr. Shibley: Well is there some problem referable to the content of this document?

Mr. Finlayson: Except that it is privileged, and I'm questioning it.

Mr. Shibley: No, but what is ~~at issue~~ about it?

Mr. Finlayson: I don't think I have to answer that question with respect.

Mr. Chairman: You were asking what it is now it happens to be in our possession, our ~~case law~~ counsel tells us that it is not his understanding that there were any restrictions on it when he gave it to him. We are giving you now an opportunity to say, is there anything in this document that would be revealing

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C.B.

(Mr. Chairman)

or prejudicial if it was revealed.

Mr. Finlayson: That's not the point with great respect Mr. Chairman. It doesn't matter whether it is ~~prejudicial~~ prejudicial or not. It is a privileged communication. It is an opinion given by a solicitor to his client on a specific legal matter; now if that isn't a privileged communication, I don't know what is.

Mr. Shibley: I don't know what principle you are attempting to establish Mr. Finlayson. But I can tell you right now that I'm not going to go along with the establishing of any kind of precedent that when certain documents that are delivered to me, without restriction, are produced to the witness, you are going to take the position you are now talking.

As far as I know there was never any privilege claimed. There was never any confidential^{ity} attached to the document. If a privilege was intended, the way it is usually exercised is that the document be withheld and not published. The rule in court, I might say, is no matter how a ~~document~~ document comes before the court its in evidence and in any event, as I look through this, I just don't understand what the exercise is about frankly.

Mr. Finlayson: Why don't you put it away if it is inconsequential?

Mr. Shibley: NO I think this committee is entitled to know what was in contemplation at the time.

Mr. Finlayson: I'm not going to argue with anybody anymore. I'm telling you that I don't know specifically.

MR SHIBLEY, THAT IS A CHANCE.

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4:50-4:55pm

C.B.

(Mr. Finlayson)

under what circumstances it was delivered to you, except that I'm told by my client that Mr. Laidlaw had a telephone conversation with you, in which he said, that this was delivered to you in confidence. ~~Now you say that is not so.~~

Mr. Shibley: That is not so

Mr. Finlayson: You say that is not so. I've not been able to get a hold of Mr. Laidlaw, so I'm not in a position

H 1541 to follow

~~You say that~~ ~~I am not waiving my right to~~ ~~the document~~ ~~and I am not waiving anything~~

~~of Mr. Laidlaw's~~ ~~document~~ ~~is~~ ~~concerning anything~~

that you say. But I want to make it abundantly clear,
certainly until Mr. Laidlaw gets back here and I can confirm
with him just what happened, I want to make it abundantly clear
that I am not in any way waiving any privilege and this is
clearly a privileged document.

Mr. Finlayson: Well, this is the greatest example
 of a privileged document I ever saw in my life. I mean, this
 opinion delivered by a solicitor to his client.
 It isn't a privileged communication, I just don't
 S.

Are the notes at the top of the page correct?

Mr. Finlayson: I can't read them.

Mr. Shibley: I can't identify these people.

Mr. Finlayson: I can't read them. I don't know.

Mr. Shibley: Mr. Moog, can you help me?

as to that?

Mr. Moog: I wouldn't know who those people ^{are} or

who this person, I think it's Joe Perschke, really, who
that is anymore. I'm sorry. I'm trying to figure out my
own handwriting. I don't know who it is.

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M.R.

(Mr. Moog)

I certainly don't know the gentleman. At least, I can't recall that I know him at all, nor do I recall any conversation with him, if that helps you, Mr. Shibley.

Mr. Shibley: Well, I may be able to help you with some of it. It looks like this last part - it's the name and then it says Director of Finance...

Mr. Moog: Of Finance, yes.

Mr. Shibley: Does the name ring a bell at all?

Mr. Moog: I don't - the name doesn't ring a bell at all.

Mr. Shibley: Well, Mr. Moog, you've looked at the document. And quite apart from anything else, is there anything in this document ~~about~~ about which you feel it's a problem to have it published to this committee?

Mr. Finlayson: Mr. Shibley, I told you that it's a privileged communication.

Mr. Shibley: That's not what I'm asking.

Mr. Finlayson: And I don't care whether it's troublesome or untroublesome.

Mr. Shibley: Oh, I see. You are just going to take the attitude that any document that is privileged is not going to be produced to this committee?

Mr. Finlayson: Mr. Shibley, you are deliberately attempting to ~~put~~ ~~me~~ ~~in~~ ~~a~~ ~~position~~ ~~where~~ ~~I~~ ~~am~~ ~~a~~ ~~person~~ ~~of~~ ~~consummate~~ ~~patience~~. I have given my explanation about this document; I am sorry that I have to get in a position where I doubt your word but I told you that I haven't been able to get hold of Mr. Laidlaw and I take the position, ~~and~~ the only position I have been able to take on the basis of the instructions that were given to me, that this document was delivered to you in confidence.

Mr. Shibley: ~~Next~~ and I regard this as a privileged communication.

Mr. Shibley: This document - let me - I think you are mistaken for this reason, there were narratives produced to me.

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M.R.

Mr. Finlayson: Mr. Shibley, there is no point in us arguing about it. We are not going to - you and I aren't going to arrive at any agreement on this at all. I have expressed my position, I think, quite clearly. I object to the production of this document. Now, it's in the hands of the committee what they are going to do with it.

Mr. Chairman: Mr. Shibley, may I ask one or two questions? Is this document advice in regard to the matter that is presently under investigation?

Mr. Shibley: Well, it's directly related to the then thinking of the financing of the construction of ~~Cataracts~~ Ontario Hydro's new head office building.

Mr. Chairman: All right. And what was the date of it?

Mr. Shibley: And it's dated September 8.

Mr. Chairman: Of last year?

Mr. Shibley: Yes, I'm afraid it's directly relevant.

Mr. Chairman: Well, September 8 of last year?

Mr. Shibley: 1972.

Mr. Chairman: Well, that was before any suggestion of an investigation would be held here at all by a Legislative Committee.

Mr. Shibley: Well, I ~~don't~~ think, ~~John~~, ^{once these} ~~documents~~ ^{it} handed over, there is no longer a privilege.

Mr. Chairman: Well, I would agree, I don't want to leave you on the spot either, Mr. Shibley, of Mr. Laidlaw coming back and saying ...

Mr. Shibley: ^{I can assure the committee} ~~Example of~~ I did not get a list of - I did not get the files and a list saying "certain of the documents within those files we ~~we~~ claim privilege for and they are delivered on a confidential basis" because I never accepted anything on a confidential basis ~~from Mr. Laidlaw or Mr. -~~ except for one thing. ~~Narratives were delivered and I said that I would not confront~~

July 30, 1973
5.00-5.05 p.m.
M.F.

H - 1542 - 1

(Mr. Shibley)

~~1542~~ from Mr. Laidlaw ~~except~~ except for one thing. Narratives were delivered and I said that I would not confront witnesses with contradictions in their narratives. I did say that, but that is as far as it went, and these files were delivered some days afterward, simply on request and the files sent over.

Now I think my friend is just mistaken in confusing the two things, the narratives and the files. I am sorry, but I am just going to have to go ahead on the basis of my recollection of what took place and not on -----

Mr. Chairman: Mr. Bullbrook, did you wish to make a comment?

Mr. Bullbrook: I was just going to say, sir, there has been no claim that they are not relevant, as I understand. There has been no claim as to their confidentiality except in the context of I take it solicitor and client privilege?

Mr. Chairman: Opinion from a solicitor to a client. Now, as I say, in my understanding that is not always privileged. I am trying to establish whether it would be privileged here.

Mr. Genest: That is a very strange proposition of law to me, Mr. MacBeth. I don't belong in this argument.

Mr. Chairman: Well I think time has come -----

Mr. R. G. Hodgson: Mr. Chairman, might I suggest something?

Mr. Chairman: Yes, you certainly may, Mr. Hodgson.

Mr. R. G. Hodgson: Could we at this time proceed with exhibit number 154?

Mr. Bullbrook: Well what does that mean? ~~color as with 154?~~

Mr. R. G. Hodgson: It looks like the same writing.

Mr. Bullbrook: As this one?

Mr. Henderson: We don't have it.

Mr. Chairman: We are discussing a document that -----

Mr. W. Hodgson: A document that we haven't seen yet.

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Mr. R. G. Hodgson: It seems to me the same initials are on the corner, that we have been talking about.

Mr. W. Hodgson: We haven't seen it yet.

Mr. Chairman: Any comments, Mr. Renwick?

Mr. Renwick: I wonder if we could ask where Mr. Laidlaw is and whether he is going to be home soon?

MR FINLAYSON

Mr. ~~Chairman~~: Well I was told he was going to be home on August 3rd. As to where he is, he is in France.

~~Mr. Renwick~~: I wish I were in France and he was here.

Mr. Renwick: Could I ask whether or not it is possible in this circumstance, since we have been getting on so well this afternoon, could I ask if it would be possible in this circumstance that Mr. Moog could waive the privilege with respect to that particular document without any particular disastrous consequences to himself, or without any admission with respect to any other or subsequent matters? Is that possible?

Mr. Finlayson; No. We are not waiving any privilege.

Mr. Shibley: Mr. Renwick, ~~and I want~~ if I may say so, I am most concerned that this committee not establish any precedent that any documents that I did get, as ^{opposed} to documents that I have not got, are in any sense privileged or the subject of any commitment. I am quite prepared to table the exchange of correspondence I had with Mr. Laidlaw referable to narratives. All he did with respect to the files is say "I have also enclosed a list describing the files in my client's possession. I have seen the general file which contains correspondence and memoranda prior to the execution of the contract, and during the negotiating period, and I have examined the financing file. I have not examined the others ~~and~~ since they did not to me appear to be relevant, but again, if you wish to do so they can be made available", and that is the only reference in his letter to the files. ~~we~~ A few days later ~~we~~ sent somebody over, received the files in question, and the only discussion I ever had with Mr. Laidlaw thereafter did not relate to the files themselves but rather to the narratives wherein I

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5.00-5.06 p.m.
M.F.

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Shibley
(Mr. ~~Stixley~~)

said "fine, I won't confront them with contradictions, I will, of course, confront them with wholesale omissions, but not as to contradictions"; but there was nothing to do with the files. The files were arranged for by Mr. Bell, who simply called over, was handed them, and gave them the receipt which is an exhibit; and I am willing to wait until August 3rd if Mr. Laidlaw is coming back - that is three days from now, four days from now.

Mr. Renwick: Mr. Chairman, I accept the position that Mr. Shibley takes on the matter, I just was trying to head off a problem if it was possible to solve it.

Tape H - 1543 follows

July 30, 1973
5:05 - 5:10 pm
JLP

(Mr. Renwick)

~~a problem if it was possible to solve it.~~ As it, I wanted to ask Mr. Finlayson because I wanted to clear this up. ~~Is this a matter~~ which can be cleared up by Mr. Laidlaw on his return, or are you asserting ~~asserting~~ a privilege with respect to all documents in counsel's possession which are from ^{solicitor} ~~attorney~~ to client?

Mr. Finlayson: Yes, I am, Mr. Chairman, because I say this. It's unfortunate. I wasn't here at the time and I don't know what Mr. Laidlaw said to Mr. Shibley so I am not in a position to comment on that. But I am sure of this, that what Mr. Laidlaw did tell me before he left, and we didn't - we had a very ^{brief} ~~brief~~ conversation, but he did leave me a memo bringing me somewhat up-to-date on ~~these~~ ^{these} things - is that he had a lot of discussions with Mr. Shibley with a view to assisting him to understand certain of the issues, including the sending of those drafts of proposed statements ~~by~~ by people from Canada Square and the like. But, it was never my understanding that he, in making material available to Mr. Shibley, was making it available to the world.

When you talk about waiving a privilege, if you are in a piece of litigation and I am the plaintiff and you are the defendant, and you were to produce a document to the opposite party, there's no question under those circumstances that you have waived a privilege by the production of the document. But surely this is a different situation where you've got a counsel who is conducting an investigation on behalf - I shouldn't say that ~~the~~ ^{the} committee's conducting an investigation, counsel is simply assisting him ^{him} and then when documents are shown to him, or handed to him that, just for his information, that that surely doesn't mean that you have for all time waived any privilege that might attach to it? As I say, I don't regard that, even if there was no condition attached to delivering it to Mr. Shibley, a waiving of privilege.

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5:05 - 5:10 pm
JLP

Mr. Renwick: That is what I wanted to try to get cleared up. I was beginning to feel as though I'm entering a quagmire again. Regardless of Mr. Laidlaw's return, are you going to assert a privilege with respect to documents now in the possession of counsel for the committee if they are solicitor-client communications?

Finlayson:

Mr. Shibley: I am going to assert a solicitor-client privilege in every ~~such~~ circumstance.

Mr. Renwick: Regardless of whether Mr. Laidlaw --

Mr. Finlayson: If he waived it, that's a different thing but I'm damn^{ab} sure he didn't do that, and nobody has asserted that he did that.

Mr. Renwick: No, I think that what, Mr. Chairman, as I take it, what counsel for the committee, Mr. Shibley, is saying *is* that the documents were delivered to him and are in his possession unconditionally, and that in any event there's the equivalent of a sub^e poena ~~& duces tecum~~ served on -- well there is ^{here's a} ~~was~~ Speaker's warrant served on Mr. Moog in this particular case. And I take it that unless Mr. Laidlaw had specifically waived the privilege, which certainly Mr. ~~Chair~~ Shibley is not saying that he specifically waived the privilege, that you are going to assert the privilege and there's no point in waiting for Mr. Laidlaw; we might as well deal with the problem now.

Mr. Finlayson: That's ~~the~~ correct.

Mr. Chairman: How do you distinguish between the documents that were delivered, and the documents that you refused to deliver, in connection with this matter of privilege?

Mr. Finlayson: I'm sorry; ^{but} which documents have I refused to ~~produce~~?

Mr. Chairman: Well, I gather that there are some files which you still ~~want~~ don't want to hand over.

Mr. Finlayson: There ~~are~~ ^{is} no Canada Square files.

Mr. Shibley: Pardon?

Mr. Finlayson: There ~~is~~ ^{are} no Canada Square files.

Mr. Shibley: There are files in the possession of Mr. Bradshaw's office.

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~~Mr. Finlayson: Oh, I know, but those are his files. And I~~
~~Mr. Shibley: Oh, yes? Mr. Finlayson:~~

am certainly asserting a privilege with respect to ^{it} - but there are no Canada Square files that I know of that haven't been made available, in one form or another, to Mr. Shibley.

Mr. Chairman: Earlier you refused to hand over a file -- ~~now~~
~~but~~ eventually you did hand it over, ~~but~~ ~~now~~ I am trying to distinguish
x how you distinguish between the files and documents you did hand
over and those that you are hesitant, and we had to argue a little
bit before they were handed over.

Mr. Finlayson: Well, I'm sorry ^{but} the one that I refused
to hand over was the one that I showed to Mr. Shibley, and then took
back, and said he could look at it. And then we had this argument

(Tape H-1544 follows)

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5.10 - 5.15 pm

H 1504 . . .

AA

(MR. ~~Genest~~ Finlayson)

~~was the one that I showed and they took back~~
~~and said he could look at it and they would bring it forward~~
whether it had to be produced. Now, I didn't argue privilege
on that occasion at all as I recall

Mr. Bullbrook: Could Mr. Finlayson help me
with any authority or precedent that solicitor-client privilege
exists before a committee of the Legislature.

Mr. Genest: You can't change the law. It is
a substantive legal right.

Mr. Bullbrook: I just wanted to ask. Again I'll
ask it. I am obviously having trouble explaining my questions
to counsel, either for Hydro or for Canada Square and that
is could they tell me if they have available to themselves
either precedent that a solicitor-client privilege exists
before a committee of the Legislature. If they don't, just
say no and I am not going to take anything from that. But do
they or do they have any precedent to help me with?

Mr. Finlayson: Mr. Bullbrook, the privilege
exists. It is up to you to demonstrate that it doesn't.

Mr. Bullbrook: Well, then I take it - may I
just record that I take the answer to be no, that he has no
precedent for me because that was the only question I asked.

Mr. Chairman: Mr. Renwick.

Mr. Renwick: Mr. Chairman, what I take it to
be, and I would assume that privilege does attach, I think
the question in this case is the very limited question of
whether or not the documents - and I restrict that term to
communications from solicitor to client in this particular
case - which have been delivered without a specific waiver
of the privilege to Mr. Shibley still have the privilege attached
to them which I take is the ~~proposition~~ proposition that Mr. Finlayson
takes.

Mr. Bullbrook: I want to voice my opinion that

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AA

(Mr. Renwick)

Mr. Renwick: Well let me just - let my try to answer you.

Mr. Bullbrook: I am sorry.

Mr. Chairman: Mr. Renwick has ^{NOT} come to ^{HIS} ~~the~~ conclusion.

Mr. Renwick: I frankly don't know the answer to the question of whether or not the privilege must be specifically waived.

Mr. Shibley: I do.

Mr. Renwick: Well, that's what I'd like to address our minds to now.

Mr. Shibley: Well, I can tell you that once a document is published, without restriction - in other words, if I had not made a commitment that, OK, I'll receive this on a confidential basis, once documents are published, the privilege is waived automatically. There is no privilege once that document is published to a third party. So when they delivered those files over to me, each and every document in it was available to be published. There is no more privilege attached.

Mr. Bullbrook: I want to say something ~~else~~ to you that I don't believe that there is any privilege to be asserted in connection with a solicitor-client relationship before this committee. I say that this committee might establish a position that such does exist, but I want to refer you again to the order establishing our rights and duties here. And I will read it. It says, "And the select committee have full power and authority to employ counsel and such other personnel that may be deemed advisable and to call for persons, papers and things and to examine witnesses under oath and the assembly doth command and compel ~~attendance~~ attendance before the select committee of such persons and the production of such papers

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H 1544 - 3

AA

(Mr. Bullbrook)

and things as the committee may deem necessary for any of its proceedings and deliberations for which purpose, the honourable, the Speaker, may issue his warrant or warrants."

Now, I take the position that we are not the same as a court in this respect. I take the position that that is the legislative body saying to us, "You are entitled to have such papers as you want." Now we have to make this decision as to whether we want those papers or not. But I just don't subscribe to the attitude that a privilege exists. This is the supreme legislative function and that is they say to us, "You get what you want ~~and~~ that you think is necessary." It's our job to decide whether we think it's necessary, having regard also to the question of privilege. I think we should take that into consideration.

Mr. Chairman: Mr. Genest, you had a comment.

Mr. Genest: I hesitate to get into acts all the time but this is a principle that concerns me directly in connection with one memorandum which is in Mr. Shibley's hands and the production

1545 - 1 follows

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M.R.

(Mr. ~~Chairman~~ Genest)

~~The document is a document prepared by Mr. Shibley in May of this year and appeared in the file and was reproduced and sent to Mr. Shibley before I had a chance to see it and it was a document prepared on the specific request of counsel and I have taken the matter up.~~

I wrote to Mr. Shibley saying that this was sent to you by mistake and it was not - it was a document prepared for the course - for the purpose of instructing counsel in connection with this inquiry and Mr. Shibley up to now has taken the position with me that he takes now with Mr. Finlayson that once I sent it to him, that's too bad, the privilege is gone.

That's why I'm interested in this particular debate because I may be faced with it. I'm quite frankly astonished by the proposition put by Mr. Bullbrook, which entails the proposition that this committee is above the law of the land because a privilege is a substantive legal right, given by the law of the land, to a citizen and which cannot be taken away, in my respectful submission, without a specific Act of the Legislature.

Mr. Bullbrook: That's the act of the Legislature.

Now since it's a substantive legal right

Mr. Genest: May I finish, Mr. Bullbrook?

Mr. Bullbrook: Give me the authority for that.

Mr. Chairman: Let Mr. Genest finish.

Mr. Genest: I say that no court in - I say with confidence to the members of this committee, that no court in this land would hold that the Legislature by a side wind, by inference, in an order it makes constituting a Select Committee, is taking away a citizen's substantive rights. I can't conceive of a court ever adopting that kind of construction.

Mr. Bullbrook: Well, now, you tell me ...

Mr. Genest: I would very strong urge - well, I think

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(Mr. Genest)

the reason there is no precedent is that no committee has ever arrogated unto itself that kind of a right.

Mr. Bullbrook: This is the ...

Mr. Genest: And it has never occurred to a committee to arrogate, to take - to overrule the law of the land.

Mr. Bullbrook: Well, you keep saying it's the law of the land, that begs the question. We are in

Mr. Genest: Privilege is a law of the land,

Mr. - the privilege is the right that a person has to communicate with a solicitor and not having it disclosed. It's a substantive legal right.

Mr. Bullbrook: The question that begs the question most respectfully as to whether that privilege obtains before the Legislature itself. That's the question we have to decide.

Mr. Deans: Could I ask - I'm no lawyer ^{therefore} ~~but~~ I sit and listen - could I ask Mr. Genest a question? Can I have the benefit of your opinion of the position that we are now in where the document has already been presented without privilege being re ~~presented~~ ?

Mr. Genest: My position on that - I have two positions - one on the legal position is that Mr. Shibley as the investigator here is not in the position of a litigant or counsel for one of the parties to a law suit and my understanding is that the principle he gives is taken from private litigation between parties, where if you let the other fellow who is on the other side, your adversary, have a document, the privilege is, of course, gone.

Mr. Deans: Well, could I ~~was~~ stop you there? Because again I don't understand it.

Mr. Genest: I don't think it's the same - we haven't got this adversary process. You have all been at pains

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(Mr. Genest)

to say that no one is on trial. There are no litigants before you.

Mr. Deans: Are you saying on the one hand that the law which normally prevails in those circumstances need not prevail here?

Mr. Genest: Yes, I see the analogy doesn't apply to this type of committee.

Mr. Deans: Well, isn't that carried to Mr. Bullbrook's point, isn't that what Mr. Bullbrook is saying with regard to the law itself? That what ~~normally~~ ^{privately} prevails in litigation between two parties in an adversary position does not prevail before this committee.

Mr. Genest: No, but you see, the law of privilege is more than that, Mr. Deans. It's not just a preventing disclosure to the other party. It's preventing disclosure to the world. No one can force any citizen of this country to disclose to anybody what he said to a solicitor. In the Don Jail, which is the usual place where that sort of thing is claimed, when he is on trial.

Mr. Chairman: Now, Mr. ~~Genest~~ Genest, are you sure of that statement? That's what ~~he~~ is bothering me because I think there is a time element ...

Mr. Renwick: Mr. Chairman, I just think it would be unwise for us to insist upon a ~~very~~ waiver of - insist upon ~~breaching that privilege because we were very clear about it.~~

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M.F.

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(Mr. Renwick)

on ~~the other~~ - insist upon breaching that privilege unless we were very clear about it.

Mr. Bulbrook: I am not suggesting we do.

Mr. Renwick: I recognize that. I think it mustn't be left in the air, that if there is a question of law involved in the production of this document, which is in the possession of the committee, I think that matter has got to be determined, but I for one would find it difficult to have the document now produced in the face of counsel specifically stating that it is his view, that it is his opinion, that that document was never delivered with a waiver of privilege attached to it and that that is his position. I don't see how we ourselves can resolve that question.

Mr. Shibley: Mr. Renwick, I should tell you that there are authorities where ~~the~~ ^{the} proposition that even documents illegally obtained are available to be put into evidence, even though they are illegally obtained. The court isn't have regard for that circumstance. That is a fact.

Mr. Renwick: Genest: I don't say that.

Mr. Renwick: But after speaking of this case of -----

Mr. Bulbrook: That is quite low.

Mr. Genest: I don't see how you can produce it? I

would like to see that piece, Mr. Shibley.

Mr. Shibley: You always use such strong terminology, Mr. Genest. I wonder whether you are handing out the tomorrow's headlines.

Mr. McCallum: You isn't have an exclusive on them either.

Mr. Shibley: I want to make it clear these documents were delivered over to a student who was sent to the ^{McCarthy} ~~AND M. C. C. AND M. C. C.~~ house to sign a receipt for them and delivered quite voluntarily.

With respect to the document, I just want to clear up the

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(Mr. Shibley)

record immediately that Mr. Genest has mentioned and which is not yet an exhibit, and I don't know yet whether I would put it ~~a~~ exhibit; it was a memorandum from one member of Hydro to another member of Hydro. It is not a communication between anyone in Hydro and Mr. Genest, or any other lawyer, and I just remind Mr. Genest of that circumstance; so that I must take issue with him as a matter of record that a document prepared for advice of counsel, after the committee was under way, was unwittingly delivered to me, ~~and~~ and should not be produced.

This is a memorandum on its face that makes no reference to counsel and was not directed to counsel and I still have not produced it because Mr. Genest has said it was delivered to me by mistake. The fact it was delivered to me by mistake is a factor I am weighing very heavily in my own mind. I am very sorry he has raised the subject in the context of this other, which is a different thing altogether .

Mr. Genest: I am sorry, I didn't want a fuling to be made, I just wanted to find -----

Mr. Shibley: I just tell the gentlemen right now that if this had been a letter directed to counsel and made at a point of time, as the Chairman indicates, when these proceedings were already under way and ~~del~~ivered unwittingly to me, I would have much more regard for what Mr. Genest is saying than otherwise; but I have to have account for the fact that the document he refers to is ~~with~~ an in-house document and makes no reference to advising counsel.

Now, getting back to this other, I would like to know really -----

Mr. Chairman: It is going to come up again, Mr. Shibley.

Mr. Bullbrook: Sure it is.

Mr. Shibley: That is right. I think that is what we are about here. I don't think that it is this document that is the

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M.F.

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(Mr. Shibley)

worrisome document. That is why I can't understand the issue unless what is being attempted here is to establish a precedent that I am not prepared to see established.

The question has been put repeatedly without an answer - what is there about this document that makes it so worrisome regardless of the question of privilege and there has never been an answer given, and that is why I am sorry to have to say this, and I say it with respect, but my concern is that what is being attempted here ^(C.A.V.) is a precedent and I am not going to - I feel I have to advise the committee not to be drawn in to establishing a precedent, that every time a document is produced that Mr. Finlayson is going to say "you can't show that to the committee because it is privileged".

Mr. Chairman: I think what we had better do, gentlemen of the committee, is to let some of us look ^(at) Mr. Wigmore and whoever else ^(we) may want to consult on this matter of evidence. ~~~~~~~~~

Tape H - 1547 follows

Mr. Chairman

Mr. Renwick: Mr. Chairman.

Mr. Chairman: Yes, Mr. Renwick.

Mr. Renwick: I'm sorry to interrupt about that. I take it

The only documents we are talking about are the documents which are in Mr. Shibley's possession which are on the letter head of or can be identified as communications from Mr. Moog's solicitor to him. I take it that that is what we are talking about and on the brief reflection that we've had to consider this matter, it seems to me that if this is a significant point of law and sufficiently clear that it would be my view that rather than to get involved in another hassle within the committee it would be appropriate, and I believe I would think in this particular case that the court would take jurisdiction to answer the question, and that it may well be that we should give consideration of the matter being a question being brought in the court to answer the question.

Mr. Chairman: Well I was going to be prepared to resolve it ourselves after representations from various counsel tomorrow. Now it is a point that perhaps I should have been aware of and been prepared to make a ~~waiver~~ ruling on. I've mentioned before that I'm not an expert trial lawyer and as far as the law of evidence is concerned, I think ^{in the hands} regarded by the courts, but remember there is a distinction which Mr. Billbrook has made that this is not a court. But I think we

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5:25 - 5:30 pm
C.B.

(Mr. Chairman)

want to follow the type of precedent that the courts would follow on a matter of this nature of privilege. I think if the court would say that this is privileged, then perhaps under these circumstances, Mr. Ballbrook, we should adopt the same ruling.

Maybe I'm going too far to even suggest that. But I'm not so sure ^{that} the court would recognize this document were privileged. One because of the time element which in the back of my mind still has some relevancy, and secondly, because of the points that Mr. Shibley mentioned of the terms in which they were delivered to him.

Now Mr. Renwick, we can do as you are suggesting, maybe that will be the outcome tomorrow. I would hope not. I would hope that maybe we could all, when I say all, that the lawyers, all the lawyers involved look at the law, the answer may be reasonably clear when we look at it.

Mr. Ballbrook, I don't think that any of us should really, and I say this respectfully to you, take the position of making a decision on our own legal advice. I put forward to you before I made a decision with the law, but I'm certainly not going to make up my mind on the basis of my advice to myself. That goes without saying.

I want to say to you if I may. That notwithstanding how arrogant this might seem, and I don't mean it in that tenor at all, ^{we} we are not a court, we are the representatives of the public. And if you recall when I was reading the order to us at the end I said specifically, that I think we should take into consideration the ~~public~~ ^{attorney} attorney and client privilege.

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5:25 - 5:30 pm

C.B.

(Mr. Bullbrook)

~~solicitor and client privilege~~. But I want to say to you sir, I would ask to be advised by our ~~xxxxxx~~ counsel as to whether he thinks ^{the} solicitor and client privilege does obtain before this committee, if that's not asking too much of him.

Mr. Shibley: Certainly I ^{have} had a very ~~xx~~ serious *question* ~~discussion~~ when we come to deal with Mr. Bradshaw.

Mr. Bullbrook: It really is not; it really isn't this document I don't think. It's a question of we are just again putting off the day when we have to make an ultimate decision again. It's going to be the question, ^{and} you know better than I, and you voice better than I, Mr. Chairman, ~~and~~ *it's* ~~it is~~ going to be the ultimate day as to whether there are other communications that we can't see because they are privileged, and that then begs or asks the question can we do the job that we are ordered to do?

Mr. Chairman: Normally Mr. Bullbrook I would agree with the proposition that we should bide by our own counsel. We've already had that advice and the only reason again that I might say, ^{is} getting counsel elsewhere on this matter is because it is his judgement on the basis on which the documents were handed over to him that is in fact being questioned. Now...

~~Mr. Bullbrook~~ ~~Mr. Chairman~~, I wonder if I might relate ~~not an exact experience, but on other~~...

H 1548 to follow

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5:30 - 5:35 pm
JLP

Mr. Allan:

Mr. Chairman, I wonder if I might relate, not an exact experience, but on other select committees that I have sat upon, when something of this type, a question of this type arose, the committee chairman has at times sought ~~advice~~ advice from the Attorney General, ^{Mr. Shibley: It's not a bad idea. Mr. Allan:} which is a simple procedure. I am not suggesting that we do this, I am leading from ignorance, but I wondered if this might be done and if there was any thought that it might be done?

Mr. Chairman: ^{I'd be} ~~prepared~~ prepared to adopt that, Mr. Renwick?

Mr. Renwick: Mr. Chairman, I really think that the

question is one where we will find that in the interests of efficiency ~~there~~ the only place where it can be properly dealt with is in the court. I think that will turn out to be the speediest method of dealing with what is obviously a difficult problem. You see, the situation seems to me to be quite clear that if there is a refusal to permit - no, if there is a claim of privilege asserted against this document, and we ask that it be produced over that objection, and it be produced, then it seems to me we may very well have committed a serious error in our proceedings. If, on the other hand, there are documents in Mr. Moog's possession that we ask to be produced, and a claim of privilege is asserted, there is then the question of whether or not it could be considered as a matter of contempt to be dealt with at some future time. And, at that time, we would have to know the answer to the question. And it seems to me we have a clear-cut situation in this instance where only a court can answer that kind of serious problem because for the purposes of contempt ~~is~~ a court of record.

Mr. Bullbrook: I want to ask my colleague to respond to this. Do you really think that ^{it is} going to be expeditious once the courts are asked?

Mr. Chairman: It may be to the Supreme Court of Canada before...

Mr. Bullbrook: I am just suggesting to you that once we say to the courts "we want you to tell us how to proceed," then there's one court that really eventually will tell us and that will be the Supreme Court of Canada.

Mr. Shibley: We would be much better off to go back to the Legislature, which is supreme in all things, and get an order of the LEGISLATURE ONE WAY or the other in this respect, because there is no question whatsoever that if the Legislature says there is to be a privilege, that's it, and if it says there is not to be a privilege, that's the end of it. And that would be far more expeditious.

Mr. Bullbrook: One other thing I wanted to say to Mr. Renwick that I'm concerned about ~~and that~~ is there are two different things here. I'm prepared to ~~not~~ accept, not accept your suggestion but if we do go to the courts, I think we've got to recognize the fact that this document is in a different position from the documents in Mr. Bradshaw's file, and if we are going to the courts we would have to ask for directions in connection with both positions, because notwithstanding Mr. Genest's interjection, it's absolutely trite law in Canada, as opposed to the United States, that evidence illegally obtained is admissible and probative.

Mr. Shibley: That is right.

Mr. Chairman: Mr. Allan has suggested —

Mr. Shibley: ~~And I am not prepared to accept any suggestion of illegality in these documents.~~

Mr. Walker: ~~Do I take it~~ Mr. Chairman, that there are more documents of this very nature in your possession that you propose —

Mr. Shibley: Quite frankly, Mr. Walker, this is what is making me so curious. I wouldn't have thought that there should be such a fuss about this document, and I can only, therefore, conclude that a precedent is being attempted here.

Walker:

Mr. Walker: Well, if this is the only document that will raise a question, and if it's not all that crucial for the time being, such that allowed you to say that you would wait ~~until~~ the return of Mr. Laidlaw on August 3 ~~before~~ *four days from now* —

Mr. Shibley: I don't think Mr. Laidlaw's return is going to change anything. I am quite prepared to —

Mr. Walker: No, no, I'm just talking about time, I'm not arguing with you.

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5.35 - 5.40 pm

H 1549 - 1

AA

(MR. Shibley)

Mr. Shibley: I am quite prepared to table the exchange of correspondence I had with him if Mr. Finlayson agrees.

Mr. Walker: Well, you have missed the point I am making and what I am saying, Mr. Chairman, is, can this matter stand down? ^C Can a reference be made following the lines of what Mr. Allan has said and can we proceed on with other matters?

Mr. Chairman: Well, I think there are other documents are there not, Mr. Shibley?

Mr. Shibley: There are other documents, yes.

Mr. Walker: Of a solicitor-client communication.

Mr. Shibley: There is - I just want to check that if I may. No, there is a letter to Mr. Bradshaw from someone other than Mr. Moor.

Mr. Chairman: But somebody from Canada Square, ^{I suppose,}

Mr. Shibley: There is another similar memorandum, though, ~~it~~ prepared by Mr. Bradshaw of September 22nd.

Mr. Walker: Well could we, Mr. Chairman, stand these down until you have had an opportunity to consult with the legal officers of the Crown in the Attorney General's Department? Then, in the meantime, could we proceed with other matters?

Mr. ~~Chairman~~ Chairman: Mr. Allan, how was that done before? Did the parties make representations to ~~somebody~~ ^{the Department} from the Attorney General's ^{or was it done publicly or privately or . . .}

Mr. Allan: Oh, very ~~informally~~ informally.

Mr. Chairman: Well, informally, does that mean the chairman and counsel too?

Mr. Allan: I think the chairman would speak with some senior officer in the Attorney General's Department.

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5.35 - 5.40 p

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AA m

(Mr. Renwick)

Mr. Renwick: Mr. Chairman, with the greatest respect, that will not expedite anything. The opinion of the Attorney General, if given after the greatest ~~of~~ of ~~consideration~~ consideration would not alter the objection that is being made on this particular matter. Secondly, I again urge you, ~~in my opinion~~ - it may sound strange to suggest that something through the courts can be more efficient than any other way, but in this case, it certainly is, ^{it} ~~is~~ I take nothing into consideration but the value of my own time. There is no way, in my judgement, in which we could go back to the Legislature and get a resolution of the Legislature enlarging the terms to permit us to override privilege which would not be subject to a serious challenge in the court. The only way in which the Legislature could override the ^{substantive} ~~substantive~~ privilege of a client with respect to communications with his solicitor would be an act of the Legislature and I, for one, can pretty well guarantee that such an act of the Legislature ~~it~~ would not be passed in this or any other instance.

So we have a very specific limited question and if it ~~should~~ needed to be phrased as two questions, the two questions can be formulated and the one question relates to documents in the possession, willingly delivered, in the possession of counsel for this committee and therefore of this committee, from the solicitor to Mr. Moog and whether that document is privileged or whether the privilege with respect to it had to be waived specifically at a given point in time.

And the second question is the broader question which ~~which~~ Mr. Bullbrook has raised but which I assume the answer, in my judgement anyway, is relatively clear that documents, that so far as the solicitor's appearance before this committee who has represented Mr. Moog for a long period of time, that a privilege claimed on the solicitor-client basis is an effective bar to us.

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5.35 - 5.40 pm

H 1549 - 3

AA

(Mr. Renwick)

Mr. Pullbrook: Well may I, before you come to any conclusion, since Mr. Renwick has given his opinion, and I mean a conclusion as to whether this matter should be referred to the court, and this is somewhat presumptuous, but I suppose voicing our opinions at all is presumptuous, I don't know whether the court would even entertain what you are asking. I would be inclined to think, frankly, that the court would say, "The Legislature decides whether they will accept the principle of solicitor-client privilege before the Legislature. ~~The~~ The courts don't do it for them."

Mr. Henderson: Mr. Chairman, might I suggest that we are quite likely to run into other roadblocks similar to this.

Mr. Chairman: I don't know what gave you that idea, Mr. Henderson.

Mr. Henderson: Well, I think the past few days is indication enough and I think the past half hour is indication of the same thing. ~~I would suggest that the committee continue with other documents if the witness~~

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M.R.

(Mr. Henderson)

I would suggest that the committee continue with other documents and if they witness and his solicitor oppose the tabling of them that we compile them and at that time; I would like to see us go into a debate on the total situation and make a decision as a committee. I think the committee is quite capable of doing that but at the moment I would suggest that we continue with another document.

Mr. Bullbrook: Well, you just ...

Mr. Chairman: I hesitate certainly to go to

Mr. Henderson: Mr. Chairman, you don't get the point. Mr. Bullbrook says we are putting off the day, we're putting off the day on this document, it might be another document tomorrow and so on.

Mr. Deans: Mr. Chairman, my understanding is application of the solicitor client relationship and not only on this one document, and that having once received that I don't know whether my colleagues suggestion is the right one or not but having once received the ruling that we would then be able to proceed with whatever documents we saw fit.

Mr. Chairman: Let me ask Mr. Renwick following up his proposal and say that Mr. Bullbrook is not correct in that the court did entertain it, where do you see the time element entering into it?

Mr. Renwick: I think, Mr. Chairman, I think there have been occasions where, bearing in mind the precedents of the court, that in a matter of this importance and this urgency that certainly in the initial instance that - I'm not an expert, I don't know, I would assume maybe the Divisional Court is the proper place, I don't know the proper ~~Form~~^{Form}, but I think if this committee were to ask the Attorney General to move in the court to get the question solved for us and to settle the terms of the questions that we are going to be asked in the court, I would think it could be done quite quickly.

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M.R.

(Mr. Renwick)

Now, either the court will say that they have no jurisdiction and it's a matter up to the Assembly or they will take jurisdiction and they will deal with it on the basis of the terms of reference of this committee and the Legislative Assembly Act and give us some guidance on the matter.

Mr. Chairman: But having thrown ourselves on the mercies of the court of having appealed to them, would we not then be stopped from letting the courts carry on by way of appeal to the Supreme Court of Canada?

If one of the parties was unhappy with the ruling? And so, I see if we do that, this is evidently sufficiently important to Canada Square to do it ~~there~~ here, I don't ~~am~~ know why they wouldn't carry it on, possibly to that degree which might be December before the matter is disposed of. That's what bothers me.

Mr. Deans: Mr. Chairman, what are you suggesting as the alternative?

Mr. Chairman: Well, I'm perhaps coming around to Mr. Henderson's thought, to just put - deal with this later on, ~~is~~ leave it now, by-pass it and see how material it is to us later on.

Mr. W. Newman: Mr. Chairman, that's what I was about to say. Being a layman on this committee, it seems to me that - and I realize it's very important to the legal people, but certainly I think it's time you get on with this hearing and I also think that perhaps you might informally talk to the Attorney General's Department and see if they could give us any advice which you might act upon and let this particular piece of - this particular letter stand down at this time and let's get on with the hearing.

Mr. Deans: Mr. Chairman, that is all good and well except that Mr. Shibley, as I understand it, has indicated to us

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M.R.

(Mr. Deans)

that this is the first of perhaps a number of documents and that Mr. Finlayson has said it would be his intention to block the introduction of that material by way of the use of solicitor client relationship and that therefore ...

Mr. Chairman: If we adopted that procedure, I think we would have to stand down all similar documents until the end.

Mr. W. Newman: Mr. Chairman ...

Mr. Deans: No, no. I want to ask simply a question I believe clears all of them - Mr. Shibley, do we have to have that document?

Mr. Shibley: I'd like to ask a question of Mr. Finlayson and that is this, and I really would like a clear answer. At the moment, there are a relatively limited number of documents in my possession emanating from Mr. Bradshaw. I believe I'm correct that there ^{are} only three that I can think of at the moment. ~~In any event and I'm not sure whether~~

H-1551 to follow

July 30/73

5:45 - 5:50 pm

C.B.

(Mr. Shibley)

~~three that I can think of a document.~~ Is that right? In any event, and I'm not sure whether Mr. Finlayson's concern is as for the documents in my possession at this time or whether he's anticipating the situation that is bound to arise when Mr. Bradshaw is in that witness ~~box~~ box and I ask Mr. Bradshaw certain questions. Now if he is anticipating the latter, I would ask him not to do so and to wait until that time to see what happens then.

For the life of me I cannot understand why the position is being taken now with respect to documents delivered into my possession. But be that as it may, if Mr. Finlayson is telling us that he really is intent respecting this facet of the matter, well fine, I think we'll all have to consider it and go from there.

If he is really only attempting to anticipate and establish precedent for when Mr. Bradshaw is in the witness box, then I think that really isn't his function. Mr. Bradshaw has his own lawyer and when Mr. Bradshaw is in the witness box...

~~On his mind:~~
~~On his mind:~~

Shoot all the God damn lawyers.

Mr. Shibley:....his own lawyer will look after him I'm sure. And his own lawyer obviously will advise him predicated on the refusal of Mr. Moog to waive his privilege, which is Mr. Moog's privilege. But I'd like to know what it is.

Mr. Chairman: Is it precedent you are worrying ~~about~~ about Mr. Finlayson?

Mr. Finlayson: Mr. Chairman I take each document each question as it comes. Now you have the document in possession of your counsel. I've made my submissions, I have nothing to add to it. I suggest you make a ruling. I don't really know why this matter can't proceed. This isn't like the Swiss file bit you know, where you have to come and break my arm to get the

July 10, 73

7:43 - 8:50 pm

C. B.

(Mr. Finlayson)

file, ^{he's} ~~you've~~ already got it.

Mr. Chairman: No, but you are hanging this ~~and~~ on a very important point for solicitors, I know, one that is geared to all solicitors' hearts, and that is a matter of privilege between solicitor and client.

~~Mr. W. Newman~~ Mr. W. Newman: If we get rid of all the solicitors we ~~can~~ could solve the thing in a hurry.

Mr. Chairman: Well, I think you are right, and I'm ready to resign anytime you ask for my resignation.

Mr. Bullbrook: It has all sorts of ramifications. Because you see the solicitor-client privilege is a privilege that's claimed by the solicitor, right?

Mr. Shibley: ~~By~~ by the client.

Mr. Bullbrook: Oh I'm sorry, by the client.

Mr. Finlayson: No, no, you are right Mr. Bullbrook. It is claimed by the solicitor. It can be released by the client.

Mr. Bullbrook: Now just hold on. The solicitor — you've got me doing it now. The solicitor and client privilege I understand, is a privilege that is claimed by the solicitor. Then he says in effect to a tribunal, "I will not respond because I ^{owe} ~~have~~ a duty to my client," the client can release him from that, okay?

Now the strange thing here, of course, is in connection with ~~the~~ the first documents and that is why I think there is a distinction between the documents in Bradshaw's possession now and the documents in our possession. What has happened here is that we are really not assessing here the question of

(Mr. Bullbrook)

solicitor and client privilege. Mr. Moog can't claim the privilege. Mr. Moog can only release from the privilege and I take it ^{that} he is not ^{of} prepared to do so.

What we have is a case for Mr. Moog claiming solicitor and client privilege, really on behalf of whomever, I take it ^A being a solicitor, who drafted that document, and yet that same counsel in effect, because we can't make distinctions between Mr. Levin and Mr. Finlayson; that's the same counsel. They are counsel for Mr. Moog and that's all, we have released those documents to our counsel. I submit, really, it is not a question of assessing at this time the solicitor and client privilege, but it is assessing a question of the confidentiality of the release of those documents and that's the thing that is at issue. I understand that and I can understand how this comes to be a case.

But I really don't think we are really dealing at this time with a solicitor and client privilege in the proper sense of the word. It is a question of a solicitor at large.

~~and I understand that this comes to be a case~~

H1552 to follow

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5:50 - 5:55 pm
JLP

(Mr. Bullbrook)

~~Mr. Bullbrook: I would be inclined to think that a court might, if my reasoning is at all valid, come to that conclusion. That is why it is absolutely essential if we are going on to the documents in Mr. Bradshaw's possession, that we do have a court interpret our position with respect to those.~~

Mr. Henderson: Mr. Chairman, I would suggest that we proceed under the terms I proposed.

Mr. Chairman: Mr. Allan, you drew the microphone forward, does that mean you had something to say?

Mr. Allan: No. I didn't intend to speak; I was just straightening my papers up. I was thinking we weren't going to go much further today.

Mr. Chairman: Mr. Shibley, I'll leave it with you to give some consideration of proceeding at the present time without testing the confidentiality of these particular documents. If you tell us you can't carry on - I'm not saying you're waiting any right, you're claiming to examine into them. But I am suggesting perhaps we set them aside for the time and review ^{their} importance to us later on. If you tell us tomorrow morning you can't proceed that way for good and sufficient reasons, then we will have to reconsider it.

In the meantime, I'll

Mr. Bullbrook: Could we get something on the record please. That document is not for Mr. Laidlaw I take it

Mr. Shibley: No, no.

Mr. Finlayson: From Mr. Bradshaw.

Mr. Bullbrook: From Mr. Bradshaw, that's what I assumed it was.

Mr. Shibley: It's a memorandum prepared by Mr. Bradshaw.

Mr. Bullbrook: Mr. Bradshaw, who is not claiming any privilege.

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5:50 - 5:58 pm
JLP

MR. Chairman: I thought you were looking earlier at a letter from the other solicitors.

Mr. Shibley: I would like to ask Mr. Finlayson, just so that we might clear up one aspect of the matter, and that is there was an exchange of correspondence between Mr. Laidlaw and I, in May, referable to narratives and in which he did make the reference to the statements. I would like to table the exchange of that correspondence if he agrees.

Mr. Finlayson: Can I look at it tonight?

Mr. Shibley: Yes.

Mr. Finlayson: I've just read it, I think it's all right but I'd like to read it again.

Mr. Shibley: All right.

Mr. Chairman: That's what I'd like to do, let Mr. Shibley consider whether he can proceed without this for the time being, and at the same time I seek quietly - when I say quietly, without any pressure of getting an immediate reply, to the Attorney General and see what his answer may be.

Again, back to the political problem I guess, that being an Attorney General it may be, the answer may be

Mr. Walker: It would be the Civil Service.

Mr. Chairman: Yes, but it would be the Civil Service rather than the Attorney General. You don't like that or Bullbrook?

Mr. Bullbrook: I like it. I wanted to tell you, Sir, that I'm not trying to be irresponsible but I cannot be here tomorrow; there is just no possibility in the world of being here tomorrow and I just wanted to inform you of that. And it's not to evade any vote that might be taken with respect to ~~the Bill~~ ~~the Bill~~. I just have a responsibility that I can't remove tomorrow.

Mr. Chairman: All right, we'll do that and my answer from the Attorney General or some solicitor of his department may not be with us to-morrow morning, so I would hope that Mr. ~~Sh~~ Shibley might find some other way of proceeding until we get an answer. On that adjourn basis, I am going to ~~table~~ it until 10 o'clock tomorrow morning.

Committee adjourns at 5:54 o'clock p.m.

EXHIBITS

Committee members:

J.N. Allan

J.E. Bullbrook

I. Deans

M. Gaunt

L.C. Henderson

R.G. Hodgson

W. Hodgson

J.P. MacBeth (Chairman)

W. Newman

J.A. Renwick

G.W. Walker

Members of the committee:

Paul Moore

Committee counsel:

R.E. Shibley, QC

Assistant to committee counsel:

J.P. Bell

Electric Hydro counsel:

Pierre Genest, QC

James McCallum, QC

Canada Square counsel:

Douglas Laidlaw, QC

Blair Cowper-Smith

G.D. Finlayson, QC

Witnesses, Canada Square
Ltd.

Gerhard W. Moog

INDEX TO EXHIBITS

<u>Exhibit</u>	<u>Page</u>	<u>Description</u>
xxx 91	1528 - 2	Notes by G. W. Moog re Hydro financing, undated.
192	1530 - 3	Letter from A. E. Ames to Canada Square, dated November 17th, 1972

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LEGISLATURE OF ONTARIO

SELECT COMMITTEE

HYDRO HEADQUARTERS

Tuesday, July 31, 1973.

Morning session

1553-1580

July 31/73
10.15-10.20 a.m.
E.M.

LEGISLATURE OF ONTARIO
SELECT COMMITTEE - HYDRO HEADQUARTERS

~~Met~~ The committee met at 10:15 o'clock, a.m. in the members' board room.

Mr. Chairman: Ladies and gentlemen, I call the meeting to order and ask Mr. Shibley to proceed.

Mr. Shibley: Mr. Chairman, before we proceed this morning I want to report to the committee on discussions that I held with Mr. Claude Thomson, who is the solicitor for Mr. Bradshaw. What I am about to report is the substance of what Mr. Thomson and I agreed should be reported to this committee at this time. I believe Mr. Thomson is here this morning.

The meeting was scheduled for nine a.m. this morning at which time I was to meet with Mr. Bradshaw and Mr. Thomson. I should tell you that Mr. Thomson himself had indicated he wished to meet with me.

Last evening, however, Mr. Thomson called me to advise that he had spoken to Mr. Finlayson and that Mr. Finlayson took the position on behalf of Mr. Moog that he refused to waive any solicitor and client privilege in any area whatsoever. Accordingly, Mr. Thomson advised me that he could not confer - I am sorry - he advised me that he and Mr. Bradshaw could not confer with me as had been arranged ^{for} this morning, or at any time. Now, that was the position that I was left with as of last evening. I have had no further communication since then from either Mr. Thomson nor from Mr. Finlayson.

Mr. Thomson: Mr. Chairman, my name is Claude Thomson.

Mr. Chairman: Yes, Mr. Thomson.

Mr. Thomson: Mr. Shibley has accurately reported the substance of what occurred yesterday. I wish to point

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(Mr.Thomson)

out, however, that the discussions that I had with Mr. Shibley in which I indicated I wished to discuss matters with him and I was prepared to have Mr. Bradshaw discuss matters with him that related to some questions that had been asked of Mr. Moog occurred before the discussions in the committee yesterday, indicating that solicitor and client privilege could be waived and could be taken to have been waived in the event that matters involving solicitor and client privilege were disclosed to the counsel for this committee.

Now Mr. Bradshaw, Mr. Chairman, finds himself in this position: He has for many years acted for Canada Square and for Mr. Moog. Like any other interested citizen, he has an interest in ensuring that this committee or any court is not frustrated in its efforts to arrive at the truth. On the other hand, as a barrister and solicitor of the Supreme Court of Ontario, he has an overriding obligation, ^{and} an overriding duty to his client to ensure that confidential communications between solicitor and client remain confidential.

Now Mr. Bradshaw has in his possession files of Canada Square, He has over the years discussed many matters, including matters that relate to the Hydro transaction with Mr. Moog. It is simply the position that without the consent of the client or without the order of this committee Mr. Bradshaw may not, and ~~it~~ ^{is} a rule of professional conduct that governs his conduct before this committee, he is dutybound not to disclose any of those matters directly or indirectly to anyone else.


It puts Mr. Bradshaw to some extent in an invidious position, but I am here to speak for him at this time in terms of making preliminary representation to the committee. I hope

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(Mr.Thomson)

the committee understands the position in the light of what occurred yesterday. There is simply no way that Mr. Bradshaw can enter into any private conversations of that kind.

Now, having regard, however, to the position that that puts the committee in, I arranged to produce Mr. Bradshaw here this morning and if the committee wishes to hear from him, wishes to ask him questions, then on a question-by-question basis and on a matter-by-matter basis I am sure that a great many of these matters which are of concern to the committee *can* 

(Tape H-1554 follows)

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PLG(Mr. C. ~~Thomson~~ Thomson)

~~basis and on a matter my matter basis. I am sure that~~
~~many of these matters which are of concern to the committee can~~
be clarified at this time. Mr. Bradshaw is here and he can testify, and then in that event, the matters that are privileged or otherwise ~~can~~ can be dealt with with Mr. Finlayson having the right to make submissions, Mr. Shibley having the right to make submissions, the committee having the right to make a ruling, and then in the circumstances, Mr. Bradshaw to decide, with my assistance, what he will do.

Mr. Chairman: Well thank you Mr. Thomson. Now you know the problem that we are dealing with. At least, I understand you do. There was no suggestion that we were going to ask Mr. Bradshaw to appear, certainly at this time, without ~~him~~.

Mr. W. Newman: Why not?

Mr. Chairman: Wait now, just a minute. Without the consent of his client. As I say at this time, we weren't discussing that at all and I certainly recognize the privilege of solicitor and client and I think most of the members of the committee wish to recognize it too.

Now the field that we are getting in to is this pass-through I think we call it, or put-through, Can you tell me whether Mr. Bradshaw is prepared to answer questions in regard to his knowledge of that transaction or surrounding that type of transaction or the allegation of it, in connection with the financing of the Hydro building?

Mr. Thomson: Mr. Chairman, Mr. Bradshaw is certainly prepared to answer some questions. All I can say is that if a question arises during the course of that examination which brings to bear a communication from Bradshaw to Moog or from Moog to Bradshaw which is privileged, then that is a matter which can be dealt with by all those persons whom I alluded to earlier, including ~~this~~ this committee, at that time. ^{But} Yes Mr. Bradshaw does have information and of course, as far as he is concerned, he is here.

Mr. Chairman: All right.

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PLH

Mr. W. Newman: Mr. Chairman may I suggest then that if we are dealing with this, we were talking about supposition on Swiss money, put-through deals, why not put Mr. Bradshaw on the stand now and let's get into this matter right at this ~~ma~~ moment in time? Let's clean it up.

Mr. Walker: I agree entirely, Mr. ~~guy~~ Chairman.

Mr. W. Hodgson: Fair enough.

Mr. Deans: Mr. Chairman, before you decide to do that, I think we should first of all find out whether Mr. Shibley is prepared to go ahead with ^{an} ~~the~~ examination of Mr. Bradshaw; and secondly I want to say that I hope that we won't consider whether we can or can't proceed, but that we would simply proceed with Mr. Bradshaw at whatever time is appropriate and deal with each matter as it arises.

Mr. Chairman: Well, that is a thought. Now, on this matter, as I understand it, it is Mr. Moog's ~~ma~~ privilege. Do I understand, Mr. Finlayson, that ^{and you} ~~are~~ are his counsel in this matter --- that you and Mr. Moog are prepared to proceed in this ^{way} ~~way~~? And to ---

Mr. Finlayson: I have no objection whatsoever. As I think somebody commented, I haven't got anything to say about it, but I certainly have no objection to Mr. Moog standing down and Mr. Bradshaw testifying, ~~a~~ and I can tell the ~~a~~committee, that he can testify as to a great number of things about the X-company and this arrangement without violating any solicitor and client privilege.

Mr. Chairman: Well Mr. Shibley is asking whether you are prepared to waive privilege.

Mr. Finlayson: No I am not prepared.

Mr. Chairman: ^{No, well,} I think that is the difference that ^{perhaps} you are making Mr. Shibley and the point that Mr. Bradshaw ~~a~~ was trying to make, that he thinks he can answer a lot of these questions that you might have to ask without falling back on privilege, but that when it may come to a question that he feels he must fall back on privilege, then he wants to do so. Now that is my understanding, but I think it would be a mistake if we didn't extract from Mr.

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xR00 Plg

(Mr. Chairman)

Bradshaw that information which he is prepared to give us. That is my own thought. If we say to Mr. Bradshaw, "thanks, but no thanks", we will not ~~have~~ have done our best to get what information is available to us.

Mr. W. Newman: Mr. Chairman, if Mr. Shibley isn't prepared for Mr. ~~Br~~ Bradshaw in total, certainly we could perhaps move ahead on some basic questions on financing with Mr. Bradshaw at this time anyway.

Mr. Walker: Yes, Mr. Chairman, I think the part that impressed me most yesterday was ~~what~~ what Mr. Genest had to say. ~~and~~ ^{he} he indicated that where we branch off into an ~~area~~ area that raises questions, we should follow that branch until its ultimate conclusion and then determine the direction from then on, and we have now. We have got this question of this put-through and I must say that is creating a real bogey ~~in~~ in my mind and bothering me to a great extent. I want to have that matter resolved,

Tape H 1555 follows

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10.25 - 10.30 a.m.
M.R.

(Mr. Walker)

~~. I don't see in my mind and bothering me to a great extent. I want to have that matter resolved~~ and I would like to hear those questions resolved with respect to Mr. Thom^(S)son, or pardon me, to Mr. Bradshaw.

Mr. Chairman: Mr. Bullbrook.

Mr. Bullbrook: I think frankly that we are begging the question again. And I'd like to get into the question because I think that eventually we are going to have to get into the question that we discussed yesterday, that is the question of solicitor and client privilege. You made the assertion, sir, that you - I forget your exact words, Mr. Chairman, that I want to associate myself with ~~them~~ if they were intended to mean what I thought they meant and that is that we do want to record that we're significantly aware of the whole concept of solicitor and client privilege and it's ^eYmbedding in our equity, perhaps our law, ^aAlthough the second thing I'm not quite too set on.

Mr. Chairman: Well, no, I'm not so sure of the second thing either. ~~But it's certainly~~

Mr. Bullbrook: ~~But it's certainly~~ in our equity. Now, what concerns me is the ability of counsel to get at the truth. Mr. Thom^(S)son I though was just right on the point when he talked about our obligation to get at the truth. That's really what we are here for.

And I just don't know that I am prepared to have our counsel put in a position of asking a question attempting to undertake an examination, recognizing that the trepidation of it all is that the next question might get us down to the focus of whether privilege ~~can~~ can be asserted before this committee, or ~~whether~~ the second and the more important question as to whether it can be asserted or not whether the committee is prepared to accept the doctrine of privilege, ~~and~~ I'd really like to hear our counsel express some opinion as to whether he is able to undertake the normal type of examination that is his

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(Mr. Bullbrook)

responsibility to get at the truth in the context of the next question--the next question might be one where privilege is claimed.

Mr. Shibley: I'd like to start back for a moment: It is obviously to be preferred that the privilege be waived completely. There is no more certain method of insuring that the truth, the whole truth and nothing but the truth is elicited if a solicitor of the Supreme Court, in whom I have the utmost confidence, gives that evidence with complete freedom of ability to answer. I tell you in advance of asking Mr. Bradshaw a single question that if the privilege was waived I would accept his testimony without qualification.

I have that much confidence in the integrity of someone whom I have known for many years and who has earned a reputation for integrity, not only with me, but with many other people within our profession. What very much disturbs me, however, is an examination which is piece-meal; piece-meal in the sense that I gather that to the extent that the questions suit the purpose of Mr. Moog, his counsel will waive the privilege, to the extent that the questions do not suit Mr. Moog, the privilege is going to be asserted.

If Mr. Moog has no concern about what the truth is, then I fail to understand why any privilege is being asked for in the circumstances. Now, having said that much to you, I want it also clear that if I am put in this position, I do not intend by the conduct of that type of examination, to be taken as acceding to the right of counsel to--I'm sorry, the right of Mr. Moog to claim a privilege.

There will be no understanding ...

Mr. Bullbrook: The right of Mr. Bradshaw.

~~Mr. Shibley: I'm sorry Mr. Bradshaw to claim it~~

~~and~~

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JLP

H-1556-1

(Mr. Shibley)

~~Mr. Bradshaw: There will be no understanding.~~
~~Mr. Bradshaw: The right of Mr. Bradshaw?~~

Mr. Shibley: I'm sorry; Mr. Bradshaw to claim it, and Mr. Moog to prevent its waiver, or to prevent a ruling of this committee that its admissable and properly asked. I do not want to get into this difficulty that having said that Mr. Bradshaw would answer questions on an individual basis, ^{AND} then we would wait upon Mr. Finlayson to exercise the privilege or not. At the conclusion of that kind of examination, I may well intend to say to this committee that those questions, respecting which a privilege has been claimed, must be ordered to be answered. And I do not intend to put myself in the box of having said, well, you agreed Mr. Shibley, and the committee agreed, to proceed in this manner, and that he should be entitled to assert privilege referable to any questions that Mr. Finlayson complains are covered by privilege. I am prepared to start on the ~~foot~~ footing indicated, namely to ask questions, to have objection recorded, but let's be clear because so many occasions have developed where Mr. Finlayson and I have not been able to agree on a variety of matters; let's be clear on one thing - that whatever else, I am not by reason of undertaking that method of questioning Mr. Bradshaw in the first instance, in any way limiting the right or the basis upon which I will hereafter ask this committee to treat the matter as one wherein there is either no privilege, or, if there was a privilege, it has been waived.

I have not come this morning prepared to examine Mr. Bradshaw, but I am quite prepared, literally on a spontaneous premise, and literally without a note in my brief, directed specifically to the examination of Mr. Bradshaw. I feel I have the case sufficiently in mind. I am quite prepared to spontaneously ask Mr. Bradshaw questions this morning. I want it understood, however, that because it is being done on a spontaneous basis, and in an endeavour to prevent, or overcome I should say, or mitigate against the problem that Mr. Genest

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JLP

(Mr. Shibley)

raised, and Mr. Walker has mentioned, to attempt to some extent fill out the ~~xxx~~ picture in this area this morning. But I want it again understood that this is going to be the first of two examinations of Mr. Bradshaw, the second being an examination for which I will have prepared; I have been put in the position of briefing for Mr. Moog, having to interrupt that to prepare for the examination of the Premier, going back to the briefing for Mr. Moog, and now being confronted with an interruption to take evidence of Mr. Bradshaw.

I understand and appreciate the concern that exists in Mr. Walker's mind respecting filling out this area but as I say I am prepared now to ask Mr. Bradshaw some questions. But I want MR. Finlayson to make it a matter of record here and now that the position I take respecting the right that I have to challenge on future examination of Mr. Bradshaw, his right to claim privilege, and maybe even to challenge it in the course of my examination today, is a right that I am not waiving; it's not a right that I am giving him any commitment whatsoever regarding the same at this time.

~~Mr. Chairman: Mr. Shibley is saying that he is not~~
~~suggesting that~~

(Tape H-1557 follows)

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10.35 to 10.40 am
fvk

(Mr. Shibley)

~~Mr. Chairman: Mr. Shibley, in saying that, you're not suggesting that Mr. Bradshaw, in coming forward this morning, will be, in any way, derogating from his position in law that he would otherwise have?~~

Mr. Shibley: Mr. Chairman, Mr. Bradshaw is represented by one of the most competent counsel in this city and someone else whom I regard very highly. He has the protection of Mr. Thomson and I'm sure Mr. Thomson will attend to his interests.

Mr. Finlayson is here to attend to the interests of Mr. Moog ^{and} Canada Square. Whatever emanates from the line of examination, I'm not prepared to again commit myself to any position as to the consequences of what happens when Mr. Bradshaw goes in that witness box.

Mr. Chairman: The point I'm trying to make is the clarification of what we're asking Mr. Bradshaw to do today. We gather that he's ready to come in and give certain evidence. You're saying that we may have a right, as a committee, to demand him to give this evidence in any event.

Mr. Shibley: That's correct.

Mr. Chairman: Whether he volunteers it or not. You're saying that, by accepting his testimony today, you want it understood that the committee is not giving away any of its rights that it otherwise would have had.

Mr. Shibley: That's right, sir.

Mr. Chairman: But, at the same time, I want it clear, to my mind anyway, that in Mr. Bradshaw coming forward voluntarily today, ~~that~~ he is not giving away any of his rights that he might otherwise have.

Mr. Shibley: I can't agree to that.

Mr. Chairman: Oh, well.

Mr. Shibley: I can't agree to that. I don't agree to that whatever and I'll tell you why. When Mr. Bradshaw proceeds to give some evidence it may well put him in the position, in certain areas

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fvk

(Mr. Shibley)

at least and maybe in respect to the whole matter, he is obliged to answer all questions. I want that clear. I don't want it taken that Mr. Shibley drew Mr. Bradshaw into the witness box. Mr. Bradshaw is being ~~produced~~^{produced} as a witness. I tell you now, if he goes in that witness box, whatever he says may very well be employed by me as a premise upon which to claim that the privilege, if it exists at all, has been waived. I don't want to be taken as drawing somebody into a position. Let's be clear on that.

Mr. Bullbrook: Yes. I want to add something to that.

Mr. Shibley: Pardon?

Mr. Bullbrook: Let me add something to that. I don't know Mr. Thomson personally but I certainly know him by reputation as an extremely able counsel. I think we're ~~also~~ missing a point here, Mr. Chairman, an extremely important point. I take the position that, during the interrogation of Mr. Bradshaw, Mr. Findlayson has no right at all to object. Absolutely none. Mr. Bradshaw is the one who claims the privilege. What will technically happen here is that when a question is asked, Mr. Bradshaw will have to be released of the privilege. I can see only one question that could be asked by our counsel and that is for Mr. Bradshaw to identify himself and once he gets into any relationship of any kind with respect to his dealings with Canada Square he then claims the privilege. Mr. Findlayson, I submit, Mr. Thomson at that time, he doesn't have a right to object at all. Mr. Findlayson and Mr. Moog, their position then is, on each individual question, whether they will release Mr. Bradshaw or not from the privilege to permit him to answer. That is technically, I think, what is going to happen here.

Mr. Shibley: You're right, Mr. Bullbrook. What has to happen is that Mr. Bradshaw would have to elicit from Mr. Moog whether Mr. Moog is releasing him from that privilege if it exists.

Mr. Bullbrook: If it exists.

Mr. Thomson: Mr. Chairman, may I -

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~~XXXXT~~

Mr. Chairman: Yes, you may.

Mr. Thomson: May I ~~add~~ have another word just to make my position clear. Mr. Bradshaw, first of all, does not himself have a privilege, or an interest, in this proceeding at all. I want everyone here to be abundantly clear about that.

Mr. Shibley: That's right.

(Tape H-1558 follows)

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(Mr. Thomson)

~~...not himself have a privilege or an interest in this proceeding at all. Now I want everyone here to be abundantly clear about that.~~

~~Mr. Shillay: That's right.~~

Mr. Thomson: Mr. Bradshaw has no interest, he has no privilege. All right, having said that, he is a witness whom you people are entitled to compel to testify by having him here this morning, all I'm saying to you is okay. Instead of having him subpoenaed by your warrant, he's here. Now when ~~he~~ goes into that box, he does not by that act, waive anything. He doesn't have the right to waive anything.

When he's asked questions, some of the questions that he will be asked, are matters of solicitor and client privilege, a great many others are not. Now, it's perfectly true, as Mr. Bullbrook points out, that initially Mr. Bradshaw has an obligation to Canada Square. To announce, ~~before~~ ^{before} ~~waives~~ answering that this is an area which I know about because of my solicitor and client relationship, at that point in time he must claim the privilege. The problem then is thrown over to Mr. Finlayson to determine whether he, in Mr. Moog's interest, ~~and~~ ^{is} satisfied to waive the privilege. That's the position. It's not a position that everything after Mr. Bradshaw's name, with respect, Mr. Bullbrook, he can testify about a great deal more than his name without involving himself in solicitor and client privilege and similarly the mere fact that he sits in the witness box and gives his name and gives any other answer does not, by that fact, waive anything, except the service of the subpoena, the service of the warrant.

Mr. Bullbrook: Well, I agree in substance.

Mr. Chairman: All right. Now, what is your position on that, Mr. Finlayson? Have you any - do you agree that that is the position?

Mr. Finlayson: I think Mr. Thomson has properly stated the position ~~and~~ in law.

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Mr. Chairman: All right.

Mr. Shibley: No, no. I'd like to know - you see, the report I received from Mr. Thomson last evening was that Mr. Finlayson was not prepared to have his client waive privilege in any area and I'd like to know whether that ~~that~~ position remains intact because if so, there is little purpose in the exercise. If he says he is going to ^{waive} ~~waive~~ the privilege in certain respects, then fine, we can get along with dealing with Mr. Bradshaw and attempt to clean up an area of the evidence at this time.

Mr. Finlayson: Well, Mr. Shibley, we are just going ^{what} over, you said yesterday. I said I'm not prepared to waive solicitor client privilege period. Now I don't know what questions you are going to ask this witness. You haven't told me what your theory of the case is and that's your business. But I am not giving a blank cheque. What I do say to this committee is that this witness can testify as to a great number of things, which are relevant to this committee's inquiry without in any way violating a solicitor and client privilege. And I don't care frankly whether you call him or not, it's none of my concern.

Mr. Chairman: Well, gentlemen, again, I think we should get ...

Mr. Henderson: Mr. Chairman.

Mr. Chairman: ...what information that we can.

That is my thought on it and we'll proceed. Now, I realize the point that Mr. Shibley is making but I don't see that we're any worse off by proceeding this way. The one point I might differ with Mr. Shibley is his insistence that ~~at~~ - in other words, once having entered the field that any privilege is gone. Now I can understand the reason for taking that position but again I can't see that we are any worse off if we don't recognize that position because we could still have our ways of getting it or possibly getting it on consideration of the committee's direct order to have Mr. Bradshaw come forward and give testimony.

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M.R.

(Mr. Chairman)

Now, it may be, I gather this, that Mr. Bradshaw may say something that would lead us to a certain conclusion, whereas if the second question had been asked, that conclusion might not be the same and that is the danger that may be you foresee, Mr. Shibley, but I still think we would be better off by taking what ~~was~~ evidence we can from this man and when we get the barriers we may have to stop and go back to this other line.

Now, I know that's not satisfactory to you.

Mr. Shibley: Mr. Chairman, let's just make one thing clear, I've recorded my position. I don't want anything that has been said by anyone else to be taken as something in which I acquiesce. ~~My~~

H-1559 to follow

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PLG

(Mr. Shibley)

~~said by anyone else to be taken as something in which I acquiesced.~~

My position is as I have said it, and as a matter of record, and I do not want to be confronted with the statement of any other person in this room, and with respect, Mr. Chairman, including any statement made by yourself, other counsel, or members of this committee. I want my position in respect of any future discussion as to the matter of privilege or otherwise to be predicated upon what I have said and the fact that I am not going to say anything more referable to the comments of others, is not to be taken by anyone as acquiescence.

Mr. Chairman: I agree with that, but after all, ~~as~~ the procedure and how we proceed is a matter for the committee to decide.

Mr. Shibley: I agree with you sir, but I don't want to be handcuffed as to the arguments I can make, ~~when the time comes~~.

Mr. Chairman: Oh no, your position is well ~~on record~~ ^{on record}.

Mr. Bullbrook: You have made your ~~position~~ ^{point} amply clear.

Mr. Chairman: Mr. Deans.

Mr. Deans: I think we all understand Mr. Shibley's position and regardless of what might be said by the Chair, that at some point if there is a problem the committee will deal with it, and that we should proceed if Mr. Shibley is prepared to proceed and let's get on to hearing something and not waste the rest of today.

Mr. Bullbrook: I want to record something and I really want to hear from the other members but I just ~~wak~~ want to record this so that we understand ~~my~~ my understanding of it. I take this position in connection with Mr. Thomson and Mr. Thomson I want you to know I am just not splitting hairs with you, but I say this to you, that when Mr. Bradshaw is asked if he acts for Canada Square, that can be for him a matter of privilege.

Mr. Genest: No.

Mr. Bullbrook: Mr. Genest, do me the service-- you know

the high esteem I hold you in personally and professionally.

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Mr. Genest: ~~It is mutual~~ ^{most sincerely} Mr. Bullbrook and I apologize.
~~xxxxxxx~~ All right.

Mr. Bullbrook: I want to say this to you; that as far as I am concerned a lawyer is entitled to take the position that it is nobody's business whether he acts ~~for~~ for a client or not, and that in itself ~~is~~ can be a privileged communication and I take the -- I continue to take this position that we could get to the second question, that we could get to the second relevant question and Mr. Bradshaw would be ~~is~~ entitled before a court of law to take the position that he is not prepared to disclose whether he acted for a client or not. I take that position. Now we are going to get down to the focal point here eventually, right? After five days we have been hedging our bets. We are eventually going to get down ~~to~~ to the focal point sometime as to whether solicitor-client privilege does exist before this committee. If you want to continue on I am not going to be difficult. I will continue on. Okay?

Mr. W. Newman: Mr. Chairman, I'd just like to make one comment. I know you want to get on with this, but talking about solicitor-client privilege, and I am talking as a layman, not as a ~~lawyer~~ lawyer, but I think every solicitor and his client have privileges, every doctor and his patient have privileges, even newspaper reporters and the people they talk to have ~~a~~ certain privileges, and I think it is very important, and you can even go as far as, if you want to go ^{to} the extreme to the confessional, and I am saying this in all sincerity, ^{that} and I think there is a solicitor-client privilege and it should be ~~adhered~~ adhered to under the laws of our land.

Mr. Shibley: The law doesn't recognize any one of those except the solicitor and client one.

~~Mr. R. G. Hodgson~~ I believe this committee recognizes others, Mr. Shibley.
Mr. Chairman: Mr. Glen Hodgson.

Mr. R. G. Hodgson: Mr. Chairman, I waive ^{no} rights in these committee hearings, but I do think we have to proceed. We have to proceed for one basic reason, and we have to know where we have to be confronted, and unless we hear and examine as far as we can, we don't know where ~~we~~ we have to exercise any of our powers as a

H 1559-3

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PLG

(Mr. R. G. Hodgson)

committee and ~~any~~ all this yakking in between doesn't seem to me to lead to the very crucial point and that is determining where we have to make decisions as a committee and based on what, that has to come afterwards.

Mr. Chairman: Mr. Shibley.

Mr. Shibley: Let's call Mr. Bradshaw.

JAMES ~~W~~ ALEXANDER BRADSHAW, Sworn.

Mr. Shibley: Mr. Bradshaw, ^{what} ~~what~~ is your occupation?

Mr. Bradshaw: I am a solicitor, partner in the firm of Campbell, Godfrey and Lewtas.

Mr. Shibley: How long have you been at the Bar?

Mr. Bradshaw: 1958.

Mr. Shibley: What field of law do you specialize in?

Mr. Bradshaw: Well, my field of law is commercial, corporation, financing.

Mr. Shibley: Do you act for Canada Square Corporation?

Mr. Bradshaw: Yes.

Mr. Shibley: And do you act for the corporations that are related to that company?

Mr. Bradshaw: Yes.

Mr. Shibley: Do you also act for Mr. Moog personally?

Tape H 1560 follows

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~~Mr. Shibley: And you act for the corporations that~~
~~are related to that company?~~

~~Mr. Bradshaw: Yes.~~

~~Mr. Shibley: Do you also act for Mr. Moog personally?~~

Mr. Bradshaw: Indeed.

Mr. Shibley: Did you participate in respect of the contract between Canada Square Corporation and Ontario Hydro referable to its head office building?

Mr. Bradshaw: I did, Mr. Shibley.

Mr. Shibley: What was the first occasion on which you were consulted by anyone respecting that project.

Mr. Chairman: Take your time to get your documents out there, Mr. Bradshaw, and arrange them as ^{you} find them most suitable to you.

Mr. Bradshaw: Mr. Shibley, I was consulted by Mr. Moog and members of his staff.

Mr. Shibley: Yes.

Mr. Bradshaw: But the first time that I, you know, and the information when we were working together dealing with the Hydro project, those were conversations with the client, which would be of a privileged nature. The first time that I met with a third party, the first time I met with Mr. Moog and his staff and somebody from Hydro to deal with ^{the} ~~the~~ matter was a meeting with Mr. Candy in Mr. Moog's office at the beginning of August in 1972.

Mr. ~~Shibley~~ Shibley: I want to know from you when was the first communication of any kind from anyone referable to the Hydro head office building?

Mr. Bradshaw: You mean from ---

Mr. Shibley: From any source whatsoever.

Mr. Bradshaw: From someone other than my client?

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Mr. Shibley: No, I want to know when was the first communication with you from anyone, including your client.

Mr. Thomson: Mr. Chairman, I don't think that the date of such a communication would be privileged, I think certainly the substance of it would be.

Mr. Shibley: Mr. Thomson, I really don't think ---

Mr. Thomson: I'm advising the witness.

Mr. Shibley: ~~now Shibley~~ --- that your characterization of the questions and answers is going to prove helpful. I think it really evolves upon Mr. Finlayson to say whether he considers any questions involves a privilege or not and to take a position leaving to this committee to reach its conclusions in that respect. I say that with the utmost respect, Mr. Thomson.

Mr. Thomson: I understand that, Mr. Shibley, and since we are all respecting one another I certainly respect you but at the moment I disagree it is up to Mr. Bradshaw whom I represent this morning to initially claim the privilege. I am here not to disrupt and not to ~~interfere~~ interfere, believe me, but I have an obligation to give him my opinion with respect to whether he is about to give information which is privileged or not, and that was the sole purpose of my interjection.

Mr. Shibley: Well now, I'm not going to get into that debate with anybody at this time, we'll worry about the character of the evidence as to whether it is privileged or not at another time. At the moment I want to know what was the first occasion on which you had any communication from any source referable to this project.

Mr. Bradshaw: Do I understand then from Mr. Thomson and Mr. Finlayson that if I advise Mr. Shibley of the time when I first met with Mr. Moog and other officers of Canada Square

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E.M.

(Mr. Bradshaw)

that this is going to be - well, I guess I really ask Mr. Finlayson whether he has any objection to me disclosing that.

Mr. Finlayson: I don't propose to say a single thing, I am not waiving any privilege, I don't propose to interfere at all.

Mr. Bullbrook: That is what you can expect.

Mr. Finlayson: I am told not to interfere and then ---

Mr. Shibley: No, but I think what you are being asked, Mr. Finlayson, is ~~in this area do you consider it~~
~~privileged~~

(Tape H-1561 follows)

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10:55 - 11:00 am
JLP

(Mr. Shibley)

~~Mr. but I know and I've asked Mr. Bradshaw, he~~

in this area do you consider a privilege attaches and that he should not answer because you haven't waived it?

~~Mr. Finlayson:~~ I don't think it's a privileged ~~communication to tell him the date, no.~~

Mr. Shibley: Okay, all right. So I take it

Mr. Finlayson: I don't

Mr. Shibley: Can we go on this footing, just to expedite, that any time a question is asked respecting which you think it's privileged, and your waiver of privilege should be recorded, or your privilege asserted, you're going to speak up?

Mr. Finlayson: Mr. Shibley, you can write it down, and everybody write it right in their book - I am not waiving any privilege to any question. Now, let's stop this cat-and-mouse game. Why don't you get on with the examination?

Mr. Shibley: Well, I'm trying very hard to. Mr. Bradshaw, will you please tell me the first time of any communication with anyone?

Mr. Thomson: The date, Mr. Bradshaw.

Mr. Bradshaw: It was in October, 1971, Mr. Shibley.

Mr. Shibley: And with whom were you in communication at that time?

Mr. Thomson: You know, Mr. Chairman, I am afraid that we are going to end up in problems if Mr. Shibley is really trying to step by step get ~~us~~ us into the area of solicitor and client privilege, aren't we really wasting our time as someone suggested? Mr. Bradshaw has lots of questions to answer with relation to many of the matters that appear to be the subject of the inquiry. If what he wants to know is a date, something as innocuous as that, that's fine. But it seems obvious that he proposes to proceed rather step by step, putting me in the ~~rather~~ invidious position of advising Mr. Bradshaw on the spur of the moment at what point in time the privilege comes.

Mr. Shibley: I'm asking questions on the spur of the moment, Mr. Thomson.

Mr. Thomson: All right, fine, then I advise...

Mr. Shibley: And I think you're equally able to respond.

Mr. Thomson: Very good then. On the spur of the moment, I advise Mr. Bradshaw that ~~that~~ he ought to claim privilege with respect to that answer.

Mr. Shibley: Mr. Finlayson, is your client prepared to waive privilege?

Mr. Finlayson: Mr. Shibley, I am ~~not~~ ^{not} waiving any privilege to any questions. Now let's stop this.

Mr. ~~Bradshaw~~ Deans: Mr. Chairman, this has gone far enough.

Mr. Chairman: I agree, but let me speak, I think what Mr. Thomson is saying ^{is} that we can more directly to the questions of relativity here perhaps in this way. I would suggest, likewise, that we can without building up the background that we are about to do. Now I KNOW IT'S DIFFICULT FOR Mr. Shibley not being prepared for this witness this morning.

Mr. Shibley: No, it's not difficult at all, Mr. Chairman. And I would like to ask the witness what was the first occasion ^{on} ~~that~~ which you were given any information as to the method of financing this project?

Mr. Thomson: You want a date, Mr. Shibley? Give Mr. Shibley a date, Mr. Bradshaw.

Mr. Bradshaw: It was in October, 1971, Mr. Shibley.

Mr. Shibley: And what instructions did you receive respecting the then intended financing for this project?

Mr. Thomson: That is privileged Mr. Bradshaw.

Mr. Shibley: I thought we were going to --

Mr. Deans: Mr. Chairman, I want to ask a question. Isn't it about time that we, in this committee, decided whether we are going to allow privilege to pertain or whether we're not. We're obviously not going to get anywhere this way, and I think that it's time that we as a committee sat down for ten minutes and shouted at each other and got the thing over with. Because this is

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JLP

(Mr. Deans)

obviously not going to work. Not only from the point of view of not getting the answers, but it's going to take us till the end of time in order to get to the final question.

Mr. Shibley: Mr. Chairman, if I may say so, the suggestion by Mr. Walker and others was that if this witness were permitted to answer questions about the history ~~of~~ the financial negotiations, it would clean up that area completely

~~In lion member:~~ Well, it won't.

Mr. Shibley: Now, ~~the~~ ^{private} very first question I ask about financing. ~~is it cleared~~

Mr. Walker: Just a moment,

Mr. Shibley: That's what it came down to.

Mr. Walker: Let's just get this a little straighter if I may. The question in my mind was the question of put-through which you entertained with Mr. Moog yesterday →

Mr. Shibley: Well, of course →

Mr. Walker: → And which has created - just a moment please - a bogey in my mind, if not on other minds, and I want that matter cleared up.

Well, ask those questions and we'll find out whether it's cleared up or not.

Mr. Bullbrook: Mr. Walker, →

Mr. Deans: Let's sort it out.

Mr. Walker: I don't think we have to entertain the solicitor - client question *at this point*.

Mr. Bullbrook: I really think the time has come that we're putting ourselves not only in public disfavour but to a great extent in public disgrace. I really think that to play this game of privilege, semi-privilege, doesn't do us any credit at all. And by saying that, I ~~don't think we should entertain any further questions from Mr.~~

(Tape H-1562 follows)

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M.r.

(Mr. Bullbrook)

~~I don't think we can say anything about this and I don't think we should~~

~~don't~~ don't, in any way, allude any disparagement to Mr. Thomson. He's carrying out, with great responsibility his function. I think that we have to though come to grips with it and I don't like executive sessions but I think we better just go into executive session so that we can, if necessary, shout at each other if we have to do so.

Mr. Shibley: Mr. Bullbrook, before you ~~that~~ do that, I would like to get it on record so we know what we are talking about, what it is that this witness is going to be permitted to answer and what it is that he is not going to be permitted to answer.

Mr. Bullbrook: You are not going to get that answer. Mr. Finlayson has made it amply clear and he's undertaking his responsibility that he is not going to waive any of the solicitor and client privilege. Now, he can't make it really, I must say, Mr. Finlayson can't make it any clearer that he is undertaking that position and we can't take issue with that position. He has to protect the interest of his client as he is instructed so to do.

Mr. Shibley: Mr. Bullbrook, just - if I may interrupt you - I had been led to understand from the exchange that this witness was willing and able and Mr. Finlayson would not interfere with his testifying as to certain aspects of the financing and if that is so, I'd like to find out what the limits are at the moment.

Mr. Bullbrook: Well, I don't take it that way.

Mr. Finlayson: If I may respond, Mr. Shibley, what I said to this committee was that I was confident that there were many areas that Mr. Bradshaw could testify to without in any way ~~via~~ violating a solicitor and client privilege and I may also say, with great respect, to you, Mr. Shibley, that I've never seen a clumsier attempt to try to disqualify this witness than what you are going through ...

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M.R.

Mr. Bullbrook: That's not necessary.

Mr. Deans: We don't need your ² respect .

Mr. Henderson: We might accomplish a little bit of the truth too.

Mr. Chairman: Gentlemen that's not - that's enough or we'll be - leave that subject.

Mr. W. Newman: Mr. Chairman, at the risk of being put into trouble if I - would it be all right if I ask Mr. Bradshaw one question?

Mr. Chairman: Yes, certainly.

Mr. W. Newman: Mr. Bradshaw, I just want to test to see how far we can go in this. You have been involved directly in the whole series of financial meetings and financing for the new hydro building ...

Mr. Bradshaw: Our firm has.

Mr. W. Newman: Your firm has ...

Mr. Bradshaw: Yes.

Mr. W. Newman: ...with Canada Square.

Mr. Bradshaw: ~~Mr. Newman~~ Yes

Mr. W. Newman: Then, do you, as the solicitor, or are you prepared to answer the fact was there any Swiss money involved in this deal? Was there a put-through deal involving Swiss money?

Mr. Henderson: No - is there?

Mr. W. Newman: Or is there? Or was there?

Mr. Bradshaw: I have ~~absolutely~~ absolutely no information

Mr. Shibley: Well, just a minute - just a minute now.

Mr. Finlayson: No, let him answer.

Mr. Shibley: Just a minute, isn't that a very convenient question and answer. I'm sorry.

Mr. W. ~~Newman~~ Hodgson: He hasn't answered.

Mr. Shibley: I'm sorry, but this is the very sort of thing that interferes with counsel's ability to elicit all information in an area. It's not good enough to get a yes or no answer from any witness as far as I'm concerned and that's been

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(Mr. Shibley)

proven repeatedly with other witnesses and I'm - please don't take my comments as directed to Mr. Bradshaw. I made my position regarding him perfectly clear. But if we are going to proceed on the basis that when a witness simply says "yes" or "no" that that is necessarily the truth in the context of what has taken place before this committee repeatedly wherein witnesses have said yes and then been shown to be stating things otherwise than were complete or accurate or correct, then again, you are putting me in a position where you don't really want ...

Mr. Bullbrook: Well, we do.

Mr. W. Hodgson: ~~Quick~~ Oh no, we want ...

Mr. Shibley: ~~Now~~ I'm not ...

Mr. Bullbrook: Mr. Chairman, I want to speak.

No, I want to speak!

Mr. Chairman: All right, ...to speak first. Now just - I'm the chairman here and

Mr. Bullbrook: Go ahead.

Mr. Chairman: I'm the chairman here and maybe it's high time I started acting as chairman.

Mr. Bullbrook: That's right.

Mr. Deans: You are supposed to chair the meeting.

Mr. Bullbrook: Very much.

Mr. Chairman: All right. Now, in regard to this matter, our procedure is that any member of this committee is entitled to ask questions and at no time have I tried to direct who may or who may not ask questions of the witness. Now, Mr. Newman has asked a question and he's entitled to an answer in connection with it. Now, as far as the interpretation of whether we get a yes or no answer from it, that is also later on the wisdom of the committee to either accept or reject that or take it in the context which it is given.

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11.00 - 11.05 a.m.
M.R.

Mr. Shibley: May I speak ?

Mr. Chairman: Yes, you may, sir.

Mr. Shibley: ~~You are putting me in the position~~

~~where you~~ . . .

H-1563 to follow

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11.05 to 11.10 am
fvk

(Mr. Chairman)

~~Yes, you may sir.~~

Mr. Shibley: ~~Yes~~ You're putting me in the position where you are going to force me to cross-examine this witness respecting a black and white answer and I do not want to be embarrassed by that situation. It ~~a cross-examination~~ compromises my examination completely to ~~me~~ have that question put up front because, every subsequent question then, will be taken as a form of cross-examining, impugning the answer that has been given and I object to that vigorously because the last thing I intend to do is to put Mr. Bradshaw, and myself, in the ^{position} ~~position~~ where I'm asking questions which are directed towards requiring him to vary, or supplement, what he has otherwise already ~~said~~ said. I think there is only one way to avoid that and that's to permit me to take him step by step through the sequence of events if, at the conclusion he says, "notwithstanding all these things, as far as I know, such and such is the case," fine. But don't put me in the position of asking the question that Mr. Henderson ~~is~~ wants put and then having, so to speak, cross-examine a fellow solicitor. ~~Is that~~ It's just - it puts me, vis-a-vis, this particular witness particularly. I don't mind doing that with other witnesses but I object to doing it -

Mr. W. Hodgson: You are special, Mr. Bradshaw.

Mr. Shibley: He is special because he -

Mr. Bradshaw: We are long-time friends.

Mr. Shibley: We are.

Mr. Bradshaw: I have a great ~~of~~ regard for Mr. Shibley.

Mr. Shibley: And moreover, Mr. Hodgson, Mr. Bradshaw is, not only a friend, but he is a solicitor of the Supreme Court of Ontario and I don't want to be put in the position of cross-examining him.

Mr. W. Newman: Mr. Chairman, -

Mr. Chairman: Mr. Newman.

Mr. W. Newman: - in speaking to Mr. Shibley's remarks, I think Mr. Shibley has answered my question himself, that he has

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fvk

(Mr. W. Newman)

complete confidence in the witness. The witness is under oath before us here today. He is a Supreme Court lawyer and I asked a pretty straightforward question. And a man/whom Mr. Shibley has confidence and, I know him by reputation, I have confidence in him myself, I'm ~~a~~ just asking a straightforward ~~and~~ question. I would like an answer to my question.

Mr. Chairman: Mr. Bullbrook, I noticed you want to make a comment here.

Mr. Bullbrook: I want to say this, if I may, you're asking, on the operating table, to be permitted to do the surgery yourself. I want to put ~~in~~ it in that context.

Mr. Henderson: No.

Mr. Bullbrook: One moment, let me finish. The chairman is quite right in his ruling, I say this to counsel. Counsel has made it amply clear to Mr. Newman ~~that~~ the problems involved in putting that direct question but, I must say, the chairman is quite right. We have every right, as a committee to ask it. Mr. Newman and Mr. Henderson have been told by a counsel that he feels, in the circumstances, that that type of question would put him in an extremely difficult position. I agree with this. I asked my colleague to please withdraw that question. Before you withdraw it, it was obvious that they were prepared to answer that question.

Mr. Shibley: I will ask the question myself eventually.

Mr. Bullbrook: I just want you to recognize that they were prepared to waive privilege on that particular question. Think of that for a moment, in the context of the privilege that's been claimed thus far.

Mr. W. Newman: Mr. Chairman, my only comment is this that I don't know whether they've ~~waived~~ waived privilege or not. Nobody has even suggested that the question would be answered as yet. I think, from a very practical point of view and I'm not a lawyer, we have spent I'm not a solicitor, I would point out that ~~thirteen~~ days, and days and days discussing the financing. I think we're at that point in time where we want confirmation, or otherwise, of the

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(Mr. W. Newman)

trail we're going ~~down~~ down and I put a very direct question and I would like an answer to my question.

Mr. Chairman: Mr. Allan.

Thomson:

Mr. ~~Allan~~ ^{BRADSHAW} Mr. Chairman, there is no privilege in dealing with third parties. I did not interrupt and advise Mr. ~~Shibley~~ to refuse to answer because, in my assessment, that question is not one that is privileged. I advised Mr. Bradshaw of that. I advised Mr. Bradshaw before I came here today with respect to areas which I thought Mr. Shibley, or someone else, might have been discussing, and that's one. I've told Mr. Bradshaw, and I'm his counsel in this, I told him that that question is not one which is privileged.

Mr. Chairman: Mr. Allan.

Mr. Thomson: So I didn't object.

Mr. Allan: Mr. Chairman, I was just thinking if the committee might decide, at this particular time, that this would be a good time to go into executive session.

Mr. Chairman: Mr. Allan, we were in one of those the other day. We were in it for a long time. We discussed many of the fields that we might discuss today again. I think we would be not making any progress. That's my thought on it.

~~Mr. Thomson:~~ ~~Let's have the same question then.~~

~~Mr. Chairman:~~ ~~if Mr. Newman wants his question I think he's entitled to.~~

(Tape H-1564 follows)

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PLG

(Mr. Chairman)

~~not making any progress. That is my thought on it.~~

~~Mr. Bullbrook: Let's have the question.~~

Mr. Chairman: If Mr. Newman wants his question, I think he is entitled to...

Mr. Bullbrook: And then let counsel go on.

Mr. Chairman: Have it asked.

Mr. R.G. Hodgson: Mr. Chairman can I have a little clarification please?

Mr. Chairman: Yes.

Mr. R. G. Hodgson: In other words, any of the unbroken chain that we are trying to put the links in is ~~now~~ privileged and when we get to the actual deal of the existing today, that involves Hydro, it is not privileged. Am I understanding correctly?

Mr. Chairman: I would gather that that is the position that they are taking, but I shouldn't be putting words in their mouth.

Mr. Thomson: That is not the position.

Mr. Bradshaw: Could I just make one ~~xx~~ statement?

Probably Mr. Thomson should do this, but in acting for Canada Square and Mr. Moog at their offices of Canada Square, I had meetings and discussions, telephone discussions and memoranda which I ~~exam~~ exchanged with them and I attended meetings with them with third ~~x~~ parties. I wrote to third parties, people that we were dealing with. The simplest situation is when once we started to negotiate the contract and I met with Mr. Moog and ~~Mr~~ Mr. Coles and Mr. Candy. I believe that Jim McCallum was supposed to be there as well at the meeting, but he was having to appear at City Hall at that particular moment, and my client, along with Mr. Candy, who I met for the first time there, explained the transaction that they had -- the deal they had made and I was given instructions to prepare an agreement which I went off and did. Now that ~~xxx~~ meeting was clearly not privileged and what went on at that meeting wasn't privileged. I then prepared the draft memorandum and submitted it to my client, which is the normal course for them to look at it and there were some modifications made and that was

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(Mr. Bradshaw)

privileged, the discussions I had when those modifications were made. And then, I understand, the draft was submitted to the lawyers for Hydro, the special counsel, who were Jim McCallum and Elmer Houser.

During the next month we negotiated. ~~Wasn't that~~ Having negotiations with Mr. McCallum and Mr. Houser, there were some meetings with them in which we discussed the documents which I am prepared to testify about and hopefully Jim McCallum and I will be in complete agreement as to what went on at those meetings.

There were other meetings in which I met with Mr. Coles and Mr. Moog, other officers of Canada Square and discussed the position we were going to take with Hydro and those meetings are privileged. We said, well, "we'll give in on this in order to get that," and it would be wrong for me to tell you about what went on between the officers of Canada Square and myself at that point. We ~~was~~ prepared more documents, the schedules for this thing, that is how we got it so fast, the net lease the ground lease, the lease-back and the building lease. It went on. We had both kinds of meetings. And then one of my partners became involved in the -- well he has been involved from the beginning but he was really carrying the ball at the end and the agreements were finally executed and delivered.

Now I can tell you about those meetings with the Hydro people. The same way with the financing. I attended meetings with officers of Canada Square discussing the financing with Company X and I hope that some time in this proceeding I don't ~~but~~ blurt out the name because I find it very difficult to do if I get excited I may. I also attended a meeting with Mr. Moog in ~~in~~ on Equitable. There is a name I can use, and I had a meeting with Mr. -- a representative of Ames and Mr. Moog, Mr. Coles, and we discussed financing. I will tell you all about those meetings to the best of my recollection, ~~and I have made notes of some of these meetings.~~

Tape H 1565 follows

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H-1565-1

(Mr. Bradshaw)

~~financing. Now I will tell you all about these meetings, to the best of my recollection.~~ I made notes of some of those meetings but I can't release the notes to Mr. Shibley because they include not only what went on at the meeting but also my thoughts about what it was and discussions I HAD WITH my client - I don't want to have to disclose my discussions with Mr. Moog and Mr. Coles, I don't think it is fair to them. So I'd like to help as much as I can on this thing, I would like to try to allay some of the fears that apparently have come out and I won't answer "yes" or "no", Mr. Shibley, I would like to explain why I am answering ^{the} questions the way I am. I hope that you are not going to catch me up sometime when you develop the thing at our subsequent meeting if, you know, if I have misinterpreted something then I will be the first to say, "Gee, I'm sorry".

Chairman:

Mr. ~~Shibley~~: Well, Mr. Bradshaw, certainly you have put your position clearly to my mind and I appreciate it. I am coming back to you, Mr. Newman. I would think, Mr. Shibley, that might be a reasonable field within which to operate. There is certainly an amount of information that we can glean from it and I think could be valuable for us that we could get today and then worry about the other legal and parliamentary procedure matters at a later date.

Mr. Newman, I am back with you, are you ---

Mr. W. Newman: Mr. Chairman, of course my question has not been answered and if Mr. Shibley can assure me that he will be asking that question directly perhaps in more legal terminology than I put the question; if I have the assurance that he will do that then I will be prepared to wait.

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Mr. Shibley: Oh, it certainly was going to be my windup question, Mr. Newman.

I would like to go back then on what you said, Mr. Bradshaw, and I must ---

Mr. Henderson: Mr. Chairman, just before we proceed could we have a little bit of clearance at the moment that we are not going to get into a ^{technical} ~~technical~~ argument, that we proceed with this witness and when they claim privilege that we accept it and then go on with the information we are going to get from ~~Mr. Bradshaw~~ Bradshaw. Let us be a little practical and sensible for a change.

Mr. Chairman: I don't think anybody has disputed too much the claim of privilege, it was just that it seemed to be bringing us to a dead end. I think Mr. Bradshaw has been helpful in the fields that he recognizes are privileged and aren't privileged and I have asked Mr. Shibley to ask what information he can within those fields as outlined by Mr. Bradshaw. He may want to go further later on but let's see what help we can get from those fields.

Mr. W. Newman: Mr. ~~Chairman~~ Chairman, I reserve my right to ask that question again in case we get bogged down.

Mr. Chairman: All right.

Mr. Shibley: Mr. Bradshaw, I gather that you are prepared to talk about financing as it evolved over the period of time save and except the communications inter^{say}, ~~say~~ yourself and your client. And I want to take you back to November of 1971 wherein the documents provided by Hydro indicate that Mr. Candy had been told by - we're presuming because it is only Candy who has the line of communication with Mr. Moog - that financing was being arranged at favourable rates, etcetera; can you tell us what you know of the plans for financing the

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(Mr. Shibley)

Hydro head office building as at November, 1971?

Mr. Bradshaw: Mr. Shibley, I can tell you, I think I can answer that question without breach of privilege, by telling you about a meeting in October which was held with a representative of Ames there.

Mr. Shibley: October what year now?

Mr. Bradshaw: 1971. I met with, I believe, Mr. Moog and Mr. Coles, and, oh, I am going to name him, I don't think it is any problem, his name is Bill Johnson.

~~CONFIDENTIAL - SECURITY INFORMATION~~

~~CONFIDENTIAL - SECURITY INFORMATION~~

~~CONFIDENTIAL - SECURITY INFORMATION~~

Ames

(Tape H-1566 follows)

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(Mr. Bradshaw)

~~name of Bill Bradshaw~~

Mr. Shibley: That's been disclosed.

Mr. Bradshaw: Good. Because I find it much easier to talk about Bill than I do about a representative of Ames. We had a meeting at Mr. Moog's office to discuss how we might arrange for the financing of the building. And at that time, MR. Moog described that there was this method of raising money in Switzerland by subscription loan, and I think probably he showed us one of the prospectuses, which was in French, I think, or German, and which we couldn't understand. But it was quite clear.

Mr. Shibley: That would be one of those prospectuses that were in that file that—

Mr. Bradshaw: I don't know where it got to, Mr. Shibley, but I can remember.

Mr. Shibley: Okay, I'm sorry to interrupt you.

Mr. Bradshaw: And, we were wondering whether there was some way to make use of this Swiss money at 6-1/2 per cent. There were problems, as Mr. Moog has described to the committee; first of all, it wasn't enough, it was ~~an~~ equivalent to \$20 million; secondly, it was ~~was~~ a straight-term loan; there was no provision for payments of principal; and thirdly, it was for 15 years. The proposal that we were thinking up for Hydro involved a long-term lease with a fixed rental payment, and it meant that there had to be amortization and there had to be principal payments right from day one, otherwise you find yourself in a position where you have got to repay \$20 million at the end of 15 years, and you've got the money in the meantime. But you have to invest in trustee investments. And then you have to refinance again in 15 years. And we had to find some additional financing as well.

Many, many ideas were discussed at that meeting. There was some suggestion that we might be able to have a rental rate that changed in order to be able to look after this. These were really just, well, sort of a brainstorming session.

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(Mr. Bradshaw)

There was no suggestion that the money was available from Switzerland, that there was a commitment I should say. All it was was that there was a source of money that was available - I am sorry - if the conditions were right. And, after a discussion, Mr. Johnson went off to think about how he might be able to work in some, ~~perhaps~~ perhaps some Canadian borrowing to supplement it.

It was at some stage or other, whether it was at that meeting or whether it was in a subsequent telephone conversation with MR. Johnson, that there was a suggestion that perhaps a wrap-around could be worked out. A wrap-around is like a put-through, Mr. Shibley, but it's a little nicer way to talk about it I suppose.

The wrap-around would involve - I believe the initial proposal from Mr. Johnson on that was a group of Canadian institutions would be prepared to, in effect, lend around the Swiss money so that the Swiss money would be borrowed and then they would supplement it, and they would be prepared to put the amortization, to arrange the amortization on their part of the loan so that the Swiss loan could be repaid in full at the end of the 15 years. In other words, they would take faster principal payments in the early years. Then, at the end of the 15 years, they would be, in effect, prepared to take out the Swiss loan. They would have given their covenant to the Swiss Bank that they would pay off the \$20 million at that point.

This was going to involve quite a bit of effort and struggle on the part of A.E. Ames and Co. because they would have had to, ~~it~~

(Tape H-1567 follows)

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(Mr. Bradshaw)

~~...on the part of A.E. Ames and Co. because they would have had to~~ it was going to have to be sort of a hand-tailored transaction and then it was going to have to be - they were going to have to go out and sell it to the institutions. That, I think, is the status of the financing in November, Mr. Shibley.

Mr. Shibley: Now, just before you go on, Mr. Bradshaw, was there any discussion of communications held with the Swiss bankers, and I might tell you it's already a matter of record, the content of two letters that were exchanged in November, 1972, with a Swiss bank.

Was there any discussion in November referable to the communications held with that bank?

Mr. Bradshaw: The only information I have, Mr. Shibley, regarding the discussions with the Swiss bank was supplied to me by Mr. Moog.

Mr. Shibley: All right. Just so that I don't put you in an awkward position for the moment, do I take it that when ~~w~~ you were talking about this wrap-around deal, the Swiss money that was being discussed was the Swiss money respecting which Mr. Moog had had discussions with that same Swiss bank, on August 13, 1971?

Mr. Bradshaw: I know nothing about his discussions with the bank, Mr. Shibley, on my own knowledge any information I have with respect to that is either supplied by Mr. Moog or it's been supplied in these hearings.

Mr. Shibley: Well, what I'm trying to do is - were you ever appraised of the fact that the Swiss money regarding which in October of 1971 you were talking of a wrap-around deal, was the same Swiss money, ^{the} same \$20 million in Swiss francs, that had been the subject of discussion between Mr. Moog and the Swiss bankers on August 13 and the subject of correspondence between Mr. Moog and the same Swiss bankers on November 10 and November 18, 1971?

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Mr. Bradshaw: Well, I'm talking now about a meeting in October, so there wasn't any correspondence ^{with the bank at that point} ~~at that point~~

Mr. Shibley: I realize that, Mr. Bradshaw. Now I'm asking you about whether on the carrying forward of the discussions with Ames, referable to a wrap-around deal, it was the same Swiss money, referable to the same Swiss bank, and with respect to which there were those correspondence, as now disclosed by that file that you were discussing at that time?

Mr. Bradshaw: Can I ~~am~~ sorry.

Mr. Thomson: Mr. Chairman, that question will involve privileged communication unless one of two things happened; unless that information was discussed ^{by Mr. Shibley with Ames & Mr. Thomson} at one of the meetings which Mr. Bradshaw attended, the question cannot be answered by Mr. ~~Bradshaw~~ Bradshaw based on any information that he was given by Mr. Moog or any other officer of Canada Square.

Mr. Shibley: No, but what I'm asking about is apparently, Mr. Bradshaw, you had discussions with Ames and I want to know whether it was any part of that discussion with Ames in November of 1971 that Mr. Moog had had these communications with that same Swiss bank and that that was the money that they were talking about?

Mr. Bradshaw: Mr. Shibley, I have to take you back - it was October. The discussions didn't take place in November so far as I can recall.

Mr. Shibley: You've mentioned October and then you mentioned a further phone call, did you not carry forward your discussions in November?

Mr. Bradshaw: I may have or I may not have, but I can't tell you.

Mr. Shibley: Well, even without the correspondence between Mr. Moog and that bank in November in the discussions of October, did Mr. Moog make reference in the conversations with Ames that he had been to Switzerland prior to that time and

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(Mr. Shibley)

~~Before that time~~ and had elicited from the terms upon which they would lend money; namely, \$20 million, 80 million Swiss, at 6 1/2 per cent?

Mr. Bradshaw: Yes Indeed.

Mr. Shibley: He did mention that?

Mr. Bradshaw: Yes but can I go to explain. Mr. Shibley, in my mind and I saw the prospectus as I mentioned, in my mind what Mr. Moog told Mr. Johnson and me at that meeting was not that he had arranged specific financing in Switzerland. All he was saying, and what we were working with, was that this amount of money is available, this type of financing is available through a syndicate of Swiss banks. Now don't get so surprised about that. What happened is that...

Mr. Shibley: Well it is the first time I have heard the term 'syndicate' of Swiss banks.

Mr. Bradshaw: Mr. Moog is probably better able to describe this to you than I am, but on the basis of that prospectus, and you have seen it, I think you will find that what ~~happened~~ happens is a Swiss bank takes the lead in this underwriting, which it does on behalf of a group of syndicated Swiss banks and then the group sells it to their customers. Now all Mr. Moog was telling Mr. Johnson and I at that particular stage was "this type of financing is available. You can get 20 million dollars or whatever it was in Swiss banks, at 6 1/2 per cent."

Mr. Shibley: Was there any discussion respecting the actual circumstances of his attendance on a bank in Switzerland in August?

Mr. Bradshaw: I don't know whether there was or not
Mr. Shibley.

Mr. Shibley: Or as to who was present at that time?

Mr. Bradshaw: I was aware I guess, but it was -- I am aware and I probably was aware who was present, but I think that was probably communicated to me in confidence. I can't recall whether or not he told Bill Johnson ^{THAT HE HAD BEEN} at the bank or not.

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Mr. Shibley: Are you able to assist us as to whether in a non-privileged situation you were told the names of all persons who were at that visit to the bank?

Mr. Bradshaw: I am sorry, I can't help you on that Mr. Shibley.

Mr. Shibley: You mean you can't help me because it is privileged or you can't help me because you have never been told?

Mr. Bradshaw: No. I can't recall whether it was a non-privileged situation or privileged situation in which I became aware who had been at the meeting.

Mr. Shibley: Are you aware as to all persons who are at that meeting?

Mr. Bradshaw: No I suppose not because I only know what I read in the paper.

Mr. Shibley: That is all I want to clear with you Mr. Bradshaw. That is the extent of your information as to who was at that meeting. Is that correct?

Mr. Bradshaw Thomson: That is not what the ~~witness~~ witness said. You are not now asking the witness what Mr. Moog told him.

Mr. Shibley: No no, I don't want to know ~~what~~ ^{what} Mr. Moog told him. If you are claiming privilege, I just want to know whether he is claiming privilege or whether he is simply saying, 'that is the ~~the~~ extent of my information.'

Mr. Bradshaw: The only information I have besides what has ~~been~~ become public at the hearings, is ~~the~~ what Mr. Moog told me.

Mr. Shibley: No. No.


Mr. Bradshaw: I wasn't at the meeting. Everything I told you about what happened...

Mr. Shibley: Mr. Bradshaw I don't want to put you in a spot as you know, but I do want to make it clear as of record whether you are saying, 'I can't give you that information because I don't know any such information, or I can't give you that information because such as I have is privileged.' Do you follow me?

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Mr. Bradshaw: ~~He said~~ YES.

Mr. Shibley: Now what I want to know is, do you have information as to all of the persons who were at that meeting and if you do, are you 

Tape H 1569 follows

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fvk

(Mr. Shibley)

~~Persons who were at that meeting and, if you do, are you~~
telling us that you cannot answer because it was information afforded to you in privileged circumstances, or is it a case where you have no such information?

Mr. Bradshaw: Will you break down the question, Mr. Shibley, please? The only information I have as to who was at the meeting would have been furnished to me by Mr. Moog.

Mr. Shibley: I'm going to ask you the question in this way. Was there someone at that meeting other than the two Swiss bankers, the Premier and Mr. Moog?

Mr. Bradshaw - Thomson: Mr. Bradshaw cannot answer that question without violating solicitor and client privilege. If you're asking - you see, your question is general enough in scope to include two areas. You can encompass the area of discussion in which Mr. Bradshaw participated with third parties there. Mr. Bradshaw can answer you with respect to that and qualify his answer accordingly.

Mr. Shibley: I realize that, Mr. Thomson. That is what Mr. Thomson And I'm only trying to caution him. Mr. Shibley I'm trying to elicit from him. I want to know whether he's refusing to answer on the basis of privilege, or that his answer is that he doesn't know of any other person being there. Now, which is it?

Mr. Thomson: I think he should give you a qualified answer to the question and not discuss whether there was, or was not, any discussion with Mr. Moog privately with respect to who attended that meeting. It would, in my judgement, be a ~~violation~~ violation of solicitor-client privilege if he tells you whether there was, or was not, a discussion with Mr. Moog privately with respect to that area.

Mr. Shibley: I'm not asking him that question.

Mr. Thomson: Do you understand me?

Mr. Bradshaw: No, not quite.

Mr. Thomson: No, Mr. Bradshaw doesn't understand me so before I argue with Mr. Shibley I'll make sure he does.

Mr. Shibley: It's only fair, you know. I'm trying to learn something about your area of expertise and you're going to have

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(Mr. Shibley)

to ~~learn~~^I a little bit about ours. All I'm asking the witness, at the moment, is do you have any knowledge, or information, that there was anyone else present at that meeting on August 13 in Zurich, Switzerland, other than the Premier, Mr. Moog and the two Swiss bankers?

Mr. Thomson: Mr. Bradshaw should not answer that question because it is sufficiently general in scope as to require him to answer ^{as to} whether he ~~has~~ has any information or not on that area which was communicated to him ~~by~~ by Mr. Moog.

Mr. Shibley: In other words, you're doing so on the basis of privilege?

Mr. Thomson: Yes.

Mr. Shibley: That's what I wanted to know.

Returning for the moment, and ~~if~~ if I may be permitted, Mr. Bradshaw, do I take it ~~and~~ that - I shouldn't put it in those terms. Was there any discussion as to the funding of the Hydro head office building prior to October 1971, prior to the occasion to which you made reference?

Mr. Thomson: With someone other than Mr. Moog, I presume?

Mr. Shibley: I'll leave it to Mr. Bradshaw to say "yes, there was but it was with Mr. Moog alone", or -

Mr. Thomson: No, no.

Mr. Shibley: - "No, there wasn't", or "yes, there was with someone in addition to Mr. Moog ~~and~~ so I can tell you about it." I can't do more than give him the options by simply asking him the question.

Mr. Thomson: You see, you're asking a series of questions, Mr. Shibley, which indirectly, ~~and~~ for Mr. Bradshaw to answer you candidly as I know he wants to, will require him to violate his client's privilege, because that kind of question is sufficiently general in scope to cover both the areas, the areas we're prepared to testify in and the areas that Mr. Bradshaw cannot, at the risk of being reported to the law society, ~~and~~ volunteer information.

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Mr. Shibley: I won't report him.

Mr. Bradshaw: I'm my own benchner.

Mr. Shibley: Mr. Thomson, what I'm just ~~trying~~ trying to do is get as much as he is free to tell this committee, all right?

Mr. Thomson: All right.

~~Mr. Shibley: If he says he's not free to tell us
about any earlier~~

(Tape H-1570 follows)

(Mr. Shibley)

~~Mr. Shibley: I think we should remove this witness from the terrible trauma that we have put him through. I think we should make a decision on this as to whether he's going to be compelled to answer all questions or not.~~

~~Mr. Shibley: And if he says he's not free to tell us about any earlier conversations, I suppose that's as far as, at the moment, subject to a ruling I may be asking for later, again without any commitment, but I am prepared now just to carry on with as much as he is able to give.~~

~~Mr. Bradshaw: I am not free to tell you about any prior conversations, Mr. Shibley.~~

~~Mr. Shibley: You're not free to, all right. You consider that any prior—~~

~~Mr. Bradshaw: That doesn't necessarily say there were any.~~

~~Mr. Shibley: All right, let's go on.~~

~~Mr. Bullbrook: This is called getting at the truth, the whole truth, and nothing but the truth.~~

~~Mr. Shibley: Yes.~~

~~Mr. Bullbrook: This is no reflection on the witness.~~

~~Mr. Shibley: Not one bit.~~

~~Mr. Bullbrook: I just want the members of the committee to recognize what we've gotten ourselves into right now. And it's no fault of the witness.~~

~~Mr. Chairman: No, it is no fault of the witness, Mr. Bullbrook, but you understand our problems as a lawyer,~~

~~Mr. Bullbrook: No, no I don't.~~

~~Mr. Chairman: Well, maybe you should then, maybe you should.~~

~~Mr. Bullbrook: Mr. Chairman, I want you to know what I think we should do. I think we should remove this witness from the terrible trauma that we have put him through. I think we should make a decision on this as to whether he's going to be ^{compelled} ~~compelled~~ to answer all questions or not.~~

~~Mr. Shibley: Mr. Bullbrook, please, let's reserve decision on that. Mr. Chairman, I think in fairness to the witness, and to Mr. Moog, what I would like to do is to establish as a~~

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(Mr. Shibley)

record as much as they consider themselves free to divulge. Then, if the record is considered incomplete, we can take up the issue that you have mentioned.

But, I would like to carry on, if everyone is agreeable, in a way we are doing.

Mr. Bradshaw, what was the next occasion on which you discussed the financing of the head office building for Hydro?

Mr. Bradshaw: Mr. Shibley, I have reviewed my files and my time slips and I am having to rely on those in giving my evidence

Mr. Shibley: I realize that.

Mr. Bradshaw: Because my thoughts go on, it's a long time ago, and I just have to rely on the records I keep as I go along.

Apart from, as I say, perhaps a conversation on the phone with Bill Johnson, the next time I met with someone and discussed it with someone other than just Messrs. Moog and Coles, probably they would be the only ones that I talked to, was in August of 1972.

Mr. Shibley: All right. Would you outline what transpired at that time.

Mr. Bradshaw: At that time, just let me go back, I described a meeting with Mr. Candy in Mr. Moog's office, in which I received instruction in the preparation of the documents and that was at the beginning of August. And on the 10th of August, Mr. Moog and I went to NEW York, I think you know the name of this, and met with officers of Excelsior Life

Mr. Moog: Equitable.

Mr. Bradshaw: I am sorry, Equitable Life. Excelsior is another one. We met with a raft of guys, five of them, to discuss whether or not Equitable would be prepared to loan the money required to construct the head office building for Hydro. During the discussions, ^{it} ~~we~~ became increasingly clear to us that because of the changes that had been made in the ^{Income} ~~Income~~ Tax Act by the ~~tax~~

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M.R.

(Mr. Bradshaw)

~~the~~ tax reform Equitable would be facing a withholding tax problem and ^{that} the interest that we paid to Equitable would be subject to Canadian withholding tax. ^{Now} This isn't always the end of the world if the recipient, if Equitable had had sufficient Canadian source income subject to U.S. tax against which ^{it} ~~was~~ could claim a credit for the withholding tax ~~was~~ paid to Canada, but Equitable did not have this type of Canadian source income and therefore it represented a net loss to it which it was not prepared to accept. So that our discussions with Equitable were - didn't amount to very much.

We did discuss rate, we discussed timing, and so on, if we could solve the withholding tax problems. We also discussed the type of security that they would want. And it became - during this discussion they told us about the high-credit lease which is used by companies subject to the laws of the State of New York, insurance companies subject to laws of the State of New York in respect to financing in which the lessee, the tenant, is obliged to pay the rent and to repair the building, to ~~be~~ in effect, do everything in connection with the building and property.

So, although the - it takes the form of a lease, ~~if~~ the payments under it by the lessee are in effect assured and that can be used as financing too, because an assignment of the rental under the high-credit lease to the lender then assures the lender that the payments will be received if there is a default under the mortgage. When we discovered that we were really having - you know, that the withholding tax was likely to create an insurmountable problem, we went on and - I'm sorry, I think we were going to try and work out something with the withholding tax so we were still exploring how it might be done.

We got a precedent of the high-credit lease and reviewed that and then went back home, not very confidentially ^{that} ~~we~~ ^{we}

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M.R.

(Mr. Bradshaw)

were going to be able to do anything with Equitable because of the withholding tax problem but we were going to work on that.

Mr. Shibley: Did you remit to them a memorandum referable to a proposed method of getting around the withholding tax problem?

Mr. Thomson: Who is "them"?

Mr. Shibley: Equitable.

Mr. Bradshaw: I don't believe I did, Mr. Shibley.

I believe I prepared that for ~~Hydro~~ —

Mr. Shibley: Did you provide a copy of that memorandum to Hydro?

Mr. Bradshaw: I don't believe I did.

Mr. Shibley: Did you provide it to anyone outside the offices of Mr. Moog or Canada Square?

Mr. Bradshaw: I don't believe I did, Mr. Shibley.

Mr. Shibley: Do you know whether Mr. Moog provided it to Equitable?

Mr. Bradshaw: No, I have no idea what use he made of it.

Mr. Shibley: I see. But you did prepare a memorandum evolving a scheme of trying to get over this problem with Equitable. Is that correct?

Mr. Bradshaw: Well, I think the fact that I prepared it is - yes.

Mr. Shibley: Would you please outline to this committee the arrangements that you had in contemplation to try to solve the withholding tax problem?

Mr. Bradshaw: By the way, Mr. Shibley, I see from the dating of the memorandum that I couldn't possibly have supplied it to Equitable because it postdates the meeting with the people from Equitable.

MMX

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M.R.

Mr. Shibley: Well, I just wondered whether you had sent it along as at the time you got back, worked out your own suggested solution and sent it on, but just - would you give the committee the benefit of what you had in mind?

H-1572 to follow

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11:50-11:55 am
PLG

~~(Mr. Bradshaw)~~

~~your own suggested solution and send it on. Would you give the committee of what you had in mind?~~

Mr. Bradshaw: I think I can, without breaching my privilege, because I think we discussed it in New York. One of the exceptions to the withholding tax ~~is~~ the bonds, ~~the~~ debentures, notes, mortgages or similar obligations of a corporation, commission or association, not less than 90 per cent of the shares or capital of which is owned by Her Majesty in right of the province, and it goes on. Now, the suggestion that this was put up to Equitable involved ^{the} incorporation of a company, 90 per cent of the shares of which would be owned by Her Majesty in right of the province of Ontario, or all of the shares of which would be owned by Ontario Hydro. The Crown-owned corporation would borrow the funds from Equitable and then lend them to the company that was building the building to finance construction. This was a proposal which would have involved the participation either of Her Majesty in right of the Province, or Hydro in the method for financing the building, and would have resulted in the interest being paid free of withholding tax to ^a non-resident mortgagee.

Mr. Shibley: Now then, was there any consideration given as to whether Hydro should ~~own~~ own the whole of the shares of this Crown-owned corporation?

Mr. Thomson: Once again, was there any consideration, I take it, in the minds of Mr. Bradshaw at the meeting in New York?

Mr. Shibley: Yes.

Mr. Bradshaw: Yes, because at that meeting we discussed the possibility that Equitable might ^{own} ~~have~~ some of the shares in the corporation.

Mr. Shibley: And was there also a consideration as to the effect upon the financial statements of Ontario Hydro, should Ontario Hydro own the whole of those shares in that Crown corporation?

Mr. Bradshaw: Yes, I think probably in New York, Mr. Shibley. I mean, you know what is in the memo. You have got a copy of it, I have got a copy of it. You are asking me these questions: the memo is privileged.

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PLG

Mr. Shibley: You have said it isn't.

Mr. Bradshaw: I am sorry. No. The memo is privileged.

Now what you are asking me ~~is~~ is, did we talk about ~~the~~ these things in New York. That is very difficult. I have notes here of some of the things we talked about in New York. I can't remember everything we talked about in New York, but I know that we did talk to Equitable, from my notes, about the possibility that they might own some of the shares. Now I probably went on to say, the problem is that ^{it} Hydro owns all the shares, that it would probably have to be consolidated ~~and~~ ^{with} its financial statements, in which case the indebtedness ~~would~~ ^{would} have to be shown on Hydro's financial statements, and I didn't talk to anybody at Hydro about that, whether that would be the case or not. but that ~~would be the case~~ ^{Hydro} why in setting out the proposal in this memo there was a suggestion that perhaps Hydro should only own part of the shares, in which case it can't be Hydro, it would have to be the Crown.

Mr. Shibley: Yes. The importance of that, of course, in terms of it being ~~the~~ shown on Hydro's financial balance sheet, was that the very excuse or reason given for a lease-purchase type transaction is that that would not be reflected on the balance sheet and it has been suggested in evidence that this ~~could~~ would not affect its overall lending position. You were aware of that?

Mr. Bradshaw: Yes that's right. That is off-balance-sheet financing, Mr. Shibley. It is ~~was~~ a common method of financing and there is nothing that is-- what was the word you used?

Mr. Shibley: You used a ~~more~~ better term.

Mr. Bradshaw: I missed it now.

Mr. Shibley: You used a better term. It was off--this was going to be a method of doing off-balance-sheet financing.

Mr. Bradshaw: For Hydro.

Mr. Shibley: For Hydro. Yes. And the reason that --

Tape H 1573 follows

July 31/73
11.55 to 12.00 noon
fvk

(Mr. Shibley)

.....~~This was ~~xxx~~ going to be a method of doing off-balance sheet financing.~~

~~Mr. Bradshaw: For Hydro.~~

~~Mr. Shibley: For Hydro, yes. The~~

Mr. Bradshaw: Somewhat similar to Dominion Stores.

Mr. Shibley: And you ~~were~~ were aware, at the time of your discussions in New York, with Equitable, that Hydro was anxious to do this deal on an off-balance sheet type arrangement. Is that correct?

Mr. Bradshaw: No, Mr. Shibley. I was aware, during my discussions in New York, that the proposal that had been made to Hydro involved a lease and ^{NOT}~~not~~ a borrowing by Hydro.

Mr. Shibley: Mr. Bradshaw, I took it from the way you ~~g~~ gave your answer, that one of the topics you raised in New York was that if Hydro owns all the shares it will form part of its balance sheet and, therefore, it shouldn't be done that way because I took it that Hydro wanted off-balance sheet type financing. Is that so?

Mr. Bradshaw: The proposal, Mr. Shibley, that was made, I don't know what Hydro wanted.

Mr. Shibley: Why did you raise it at the meeting then? Let me just ask you that. What was in your mind that brought you to raise it?

Mr. Bradshaw: This was an unusual arrangement so far as Equitable was concerned. If it made them feel a little better than to own some of the shares of the company ~~xxxxx~~ somebody besides the Crown was going to have to own some shares. It was either going to be one of Mr. Moog's companies, or it was going to have to be the lender.

Mr. Shibley: Mr. Bradshaw, at the meeting in New York you were concerned that if the whole of the shares of this Crown corporation ~~were~~ were held by Hydro then the obligations of that company would have to form part of the consolidated financial statement.

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11.55 to 12.00 noon
fvk

Mr. Bradshaw: I was not concerned^{r/} about that in New York, no, Mr. Shibley.

Mr. Shibley: I thought you said you mentioned -

Mr. Bradshaw: No, I was dealing with Equitable at that point.

Mr. Shibley: I realize that.

Mr. Bradshaw: I wasn't concerned about Hydro's position at that particular point.

Mr. Shibley: Was it part of your discussion, at that time however, that if all the shares were held by Hydro, it would form part of their consolidated balance sheet?

Mr. Bradshaw: I doubt if I raised that specific point in New York, but ^{I may have,} ~~anyway~~ Mr. Shibley, I have answered the question on the basis of -

Mr. Shibley: You may have, all right. Now, why was it a matter of concern that it would form part of the consolidated balance sheet?

Mr. Bradshaw: You just answered that question yourself, Mr. Shibley.

Mr. Shibley: I'd like to know what was in your mind at that time, Mr. Bradshaw.

Mr. Bradshaw: What was in my mind at that time was that the proposal, and it still is in my mind, was for a lease, a so-called lease purchase which doesn't ~~in~~ appear on the ~~balance sheet~~ balance sheet of Ontario Hydro. Therefore, the idea is that it doesn't affect its borrowing ^{power.} ~~power. It would be~~ One of this magnitude would no doubt be noted ~~but~~ ^{in most} financial statements.

Mr. Shibley: That was going to be my next question. It is noted and, ~~is~~ is it not a fact that lending institutions do take into account long-term rental obligations such as this in evaluating the credit of an institution?

Mr. Bradshaw: Mr. Shibley, you are now asking me an area in which I would be just answering on supposition. You can certainly get better evidence ^{than} ~~that~~ ^{for} ~~from~~ this committee from an investment ~~but~~ dealer than you can from a solicitor.

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fvk

Mr. Shibley: I'm not so sure I can get better evidence ~~that~~ than your own, Mr. Bradshaw. You're in the field of doing financing are you not?

Mr. Bradshaw: Indeed.

Mr. Shibley: And you're familiar with what is incorporated in many prospecti as to ~~not~~ ^{NOT} assuming long-term rental obligations, are you not?

Mr. Bradshaw: In many. There are all kinds of financing plans, Mr. Shibley. Sometimes they're included in the ~~contract~~ ^{covenant} and sometimes they're not.

Mr. Shibley: All right. Sometimes it's included in the covenant that they are not to undertake long-term rental obligations?

Mr. Bradshaw: Well, no, say on lease-backs and they treat them as if they were ~~debt~~ ^{debts} but that's usually involved in very junior companies and the trend today, Mr. Shibley, is to get away from restrictions in ~~contract~~ covenants.

Mr. Shibley: I think what the committee is looking for now, Mr. Bradshaw, is your help to the extent that you can give it, as to whether Hydro really were succeeding on this type transaction ~~and~~ avoiding.....

↓
(Tape H1574 follows)

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12.00-12.05 p.m.
E.M.

H-1574-1

(Mr. Shibley)

~~Now, Mr. Bradshaw, can you help to the extent that you can give it, as to whether Hydro really were succeeding on this type transaction in avoiding ---~~

Mr. Bradshaw: I can't help them on that, ^{I mean} this was the proposal that was made to them, it seemed to have favour with Hydro, this was ^{was} the proposal I was pursuing and this was the danger I saw with the plan ---

Mr. Shibley: Now returning to the subject matter of your discussions with ---

Mr. Bullbrook: Before you return to that, I don't know whether the question has been asked or whether the witness will be permitted to answer it, but I don't have a note of the date of the memorandum.

Mr. Thomson: I don't think that the witness should be asked that, Mr. Shibley has got it and the memorandum is privileged.

Mr. Shibley: It is in the record already.

Mr. Thomson: Well, all right. *This is my first day here ---*

Mr. Shibley: So let us not argue about something ---
I think it is already of record.

Mr. Thomson: Then I suggest, Mr. Shibley, that you tell Mr. Bullbrook.

Mr. Bullbrook: All right, that is fine, that is why I prefaced my question *that way*.

Mr. Shibley: It is dated September 8, 1972.

Mr. Bullbrook: Thank you.

Mr. Shibley: When you were having the discussions respecting exemptions from withholding tax, were you talking about withholding tax as it affected borrowings from U.S. corporations, foreign corporations, or other foreign lenders or
--- I am sorry,
A

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E.M.

H-1574-2

(Mr.Shibley)

both?

Mr. Bradshaw: I'm sorry, would you mind rephrasing that question, Mr. Shibley?

Mr. Shibley: When you had your discussions respecting withholding tax, were you talking about withholding tax as it affected borrowings from a U.S. corporation, other foreign lenders, or both?

Mr. Thomson: Discussions in New York, Mr. Bradshaw.

Mr. Bradshaw: Thank you, Mr. Thomson. Mr. Shibley, I can't remember the details of the discussion, but I would think it would be extremely unlikely that I talked to a U.S. institution about withholding tax on foreign borrowing. Or borrowing abroad.

Mr. Shibley: I remind you that you were talking about a wraparound deal involving foreign funds; does that assist your memory?

Mr. Bradshaw: I am not sure that we did discuss a wraparound that day, Mr.Shibley.

Mr. Shibley: I see. All right.

Mr. Bradshaw: I have no note that that was under discussion.

Mr.Shibley: Are you unable to answer that question because of a privilege situation; is that what you are telling us? That any discussion you had ---

~~xxx~~ Mr. Bradshaw: No, Mr.Shibley, you asked me whether we discussed ~~withholding~~ ^{withholding} taxes as it applied to ---

Mr. Shibley: Foreign lenders.

Mr. Bradshaw: Yes, excluding the United States.

Mr.Shibley: Yes.

Mr. Bradshaw: And you ask me whether we discussed

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E.M.

H-1574-3

(Mr. Bradshaw)

that at the meeting in New York.

Mr. Shibley: Or with Ames at any time.

Mr. W. Hodgson: One at a time.

Mr. Shibley: It doesn't matter because I ^{gather} ~~gather~~
^{on which} the basis they are saying they are outside the privilege is that
you had discussions regarding these matters with others. So —

Mr. Bradshaw: Well, I doubt if I discussed it
in New York.

Mr. Shibley: All right.

Mr. Bradshaw: You said that we were discussing
the wraparound, I don't ~~believe~~ believe testified to that effect.

Mr. Shibley: I'm sorry, forget that, forget that.
What I want to know is, did you discuss withholding tax as it
affected other foreign lenders?

Mr. Bradshaw: With Bill Johnson?

Mr. Shibley: Well, with anyone outside of Canada
Square.

Mr. Bradshaw: I may have with Bill Johnson.

Mr. Shibley: All right, you may have with Bill
Johnson of ---

Mr. Bradshaw: I may have in New York too, I ---
I'm sorry ---

Mr. Shibley: So that the scheme of — and I don't
want that term to ~~be~~ have any imputation ^{on} the arrangement or scheme
whereby there would be a Crown corporation owned by Her Majesty
in the right of the Province of Ontario, was directed to solving
or avoiding the withholding of tax on interest ~~payable~~ payable on
foreign borrowings, be they U.S. or other foreign borrowings?

Mr. Bradshaw: It would work for either.

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Mr. Shibley: Work for either. It would fall

within an exemption under The Income Tax Act, is that correct?

Mr. Bradshaw: Yes.

Q Mr. Shibley: Was that idea ever pursued with Equitable or anyone else?

Mr. Bradshaw: After that meeting?

Mr. Shibley: At any time.

Mr. Bradshaw: I didn't pursue it with Equitable.

~~Mr. Shibley: I should tell you, Mr. Bradshaw,~~

~~and I think you~~

(Tape H-1575 follows)

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M.R.

(~~Mr. Bradshaw~~)

... ~~I didn't pursue it with Equitable.~~

Mr. Shibley: I should tell you, Mr. Bradshaw, that - and I think you were here yesterday when I outlined a chronology of events in the spring of 1972 - that on March 30 Mr. Candy is reporting to Hydro that half of the funding was Swiss and that it was secure. Can you assist us as to whether in fact as at March 30, 1972, the Swiss portion of the financing for the head office building was secure?

Mr. Bradshaw: The only information I have with respect to the Swiss financing, Mr. Shibley, would come from Mr. Moog.

Mr. Shibley: Well, I want to understand that. Are you telling me that you know of the circumstances as they existed at March 30 but you consider yourself unable to answer because of the privilege?

Thomson:

Mr. ~~Bradshaw~~ No, Mr. Shibley, that question is privileged too. Mr. Bradshaw answered that the only information he has with relation to Swiss financing came from Mr. Moog.

Mr. Shibley: No, no, I'm talking about March 30 now because it's already published to Mr. Candy, Mr. Thomson, and I took it from what Mr. Moog himself has said that his only line of communication with Hydro was with Mr. Moog - I'm sorry, with Mr. Candy. Now, Candy had a visit with Mr. Moog on March 30 and then on the same day ^{he} ~~he~~ memoed Hydro's file specifically on this point that the Swiss portion of the financing was secure. Now, I don't see any problem about that area of asking this witness what he knows about it because it was the subject of discussion apparently.

Mr. Thomson: The only way ^Y ~~that~~ that Mr. Bradshaw could possibly know what Mr. Moog said to Mr. Candy, ^{he} ~~he~~ had a discussion and I take your word for it, ^{the} ~~the~~ only way he could know ...

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M.R.

Mr. Shibley: ~~Mr.~~ You don't have to take my word for it, it's in the documentary evidence.

Mr. Thomson: I know, ~~I~~ I wasn't here ~~but~~ but all I'm saying is that the only way that Mr. Bradshaw could possibly know what, if anything, Mr. Moog said to Mr. Candy would be from what Mr. Moog told him.

Mr. Shibley: Unless he was there at the time.

Mr. Thomson: Yes.

Mr. Bradshaw: No, I wasn't there at the time.

~~Mr. Thomson~~ Well, that solves that.

Mr. Shibley: All right. Then, even on the basis of other sources of information, it already being a matter of public information, or of some evidence, let's put it that way, that ~~you~~ you see Mr. Candy was told by Mr. Mink on the 28th to find out if the financing was secure; Mr. Candy met with Mr. Moog on the 30th and reports on that day that the ~~Swiss~~ Swiss portion was secure.

Now, I want to know what you know about whether the Swiss portion of the financing was secure as at March 30?

Mr. Thomson: Do you know from any source other than what Mr. Moog has told you, Mr. Shibley, or Mr. Bradshaw? Otherwise, the answer ~~is~~ you just simply say that you can't answer the question.

Mr. Bradshaw: I have no information other than what I obtained from Mr. Moog so I guess I can't answer the question.

Mr. Shibley: Not at this time, anyway.

Mr. Thomson: You are ~~only~~ dealing with this time, at the moment, Mr. Shibley.

Mr. Shibley: Yes, I realize that. Now, then, there is also in evidence, Mr. Bradshaw, a letter dated May 15, 1972, from this Swiss bank that had been visited in August, and it's also in evidence that there was a meeting, Mr. Moog described it as more social than anything, in Toronto with that Swiss banker in May. The letter indicates that that

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M.R.

(Mr. Shibley)

Swiss banker was to convey a message to the bank in Zurich by the time he returned after travelling in Europe some time in mid-June.

And there is also in evidence a memorandum of June 21 wherein Mr. Moog, memoing himself, so to speak, indicates - may I ~~have that memorandum and I'd like it~~

~~_____~~

H-1576 to follow

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12:10 - 12:15 pm
JLP

(Mr. Shibley)

2

~~wherein Mr. Moog, mentioning himself to be present, indicates that I~~
have that memorandum, and I'd like it produced to the ~~witness~~ ^{witness,} that
~~he~~ was contemplating a put-through deal with Equitable

Mr. Bradshaw: What date was that?

Mr. Shibley: It's June 21, 1972, Exhibit 189, and I think you should see that. You'll notice the last paragraph wherein it says "I then suggested that we work out a put-through deal whereby we organize funds for Equitable in Switzerland, Equitable charges a minimum mark-up, and loans us the money, with us compensating for any exchange rate."

Mr. Bradshaw, what assistance can you afford this committee as to the discussions between Mr. Moog and the Swiss banker in Toronto, in May, as to the message that was communicated to that Swiss Bank in mid June, and as to the discussions between Mr. Moog and Equitable as indicated by this June 21 memorandum?

Mr. Bradshaw: The first part of the question relates to a letter? Is that one of the secret letters?

Mr. Shibley: Yes, it is. And I don't want to even show it to you but I'll read the portion of it that -

Mr. Bradshaw: I don't think I've ever seen that letter.

Mr. Thomson:
~~Mr. Thomson~~ It's really secret.

Mr. Shibley: It says, it's a letter from the Swiss Bank dated May 15, 1972. "Just a line again to thank you for having taken the trouble to come downtown to my hotel to meet me. As I told you, I will do some travelling before I return to Zurich. But, about the middle of June, I intend to be back in Zurich and I will then certainly give your message to so and so, and so and so. Looking forward to meeting you at some later occasion."

Mr. Walker: ~~CONFIDENTIAL (Inaudible)~~.

Mr. Shibley: I came close.
truly,

Mr. Bullbrook: Yours ~~truly~~, so and so.

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Mr. Shibley: Yes. Do you have any knowledge or information as to the discussions that took place with that Swiss banker, in Toronto, in May of 1972?

Mr. Bradshaw: Only what You've told me.

Mr. Shibley: Do you have any information as to the message that was intended to be communicated to the Swiss Bank and which appears was expected to be communicated in mid-June of 1972?

Mr. Bradshaw: No, I don't, Mr. Shibley.

Mr. Shibley: All right then, that carries us immediately forward to Exhibit 189, which is in front of you. What is your knowledge and information as to the content of the last paragraph in that Exhibit?

Mr. Bradshaw: None, Mr. Shibley.

Mr. Shibley: None at all?

Mr. Bradshaw: No.

Mr. Shibley: So that whatever Mr. Moog was discussing with Equitable at ^{this} ~~this~~ point in time * you had no involvement in it? ^{haven't}

Mr. Bradshaw: He hadn't involved me. I ~~hadn't~~ talked to Art Keegan in connection with this transaction at all.

Mr. Shibley: Your first involvement with Equitable was in August, 1972?

Mr. Bradshaw: IN connection with this transaction, Equitable ..on some other deal, I know Art Keegan.

Mr. Shibley: No, I'm not interested in the others; I'm just talking about this deal. The first time was in August?

Mr. Bradshaw: Yes.

Mr. Shibley: All right. Now, on July 18, Mr. Candy reported to Hydro that the developer anticipated that the whole of the financing would be Swiss.

Mr. Bradshaw: I was on holidays.

Mr. Shibley: July 19.

Mr. Bradshaw: Yes, I was on holidays.

Mr. Shibley: That may be but I had to fill in

Mr. Bradshaw: I haven't had any this year.

Mr. Shibley: Neither have we.

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JLP

Mr. Deans: It seems to be contagious.

Mr. Bradshaw: Let's stamp it out.

Mr. Shibley: Mr. Bradshaw, there was also evidence that

~~it was also~~

(Tape H-1577 follows)

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12:15-12:20 pm
PLG

(Mr. Shibley)

~~There was also evidence that~~ it was to be all Swiss financing, or there was discussion of all Swiss financing on the basis of half of it in one year and the other half on a second installment. In other words, there would be a two-installment payment with a year intervening between the two, this having to do with the limitation of 20 million on any given loan.

Now, having provided you with all that evidence, I appreciate you haven't kept abreast of the whole of it, but there was evidence to that effect. What is your knowledge or information as to the fact that as at July 19, the whole of the financing was anticipated to be Swiss?

Mr. Bradshaw: Mr. Shibley, I don't know as of today looking back, I can't tell you whether I knew about that as a result of a discussion I had with Mr. Moog which would have been privileged, or whether I first heard that during the committee hearings. I was away at the time. I wasn't in close connection with my client in this period.

Mr. Shibley: Well Mr. Bradshaw, let me put you at ease to this extent, but please take ~~advice~~ advice of your own counsel, it does appear that that information was communicated by Mr. Moog to Mr. Candy so that there was publication of the information to the extent that I have outlined it to you. Now I would like to know what your information and ~~his~~ knowledge is in respect to the same matter.

Mr. Thomson: Well, let me just say something since ~~somebody~~ somebody made reference to me Mr. Shibley. The fact that Mr. Moog, or that Mr. Candy may have given evidence that Mr. Moog told him something does not in my view of the law, remove any privilege that may be attached to anything that Mr. Moog may have told Mr. Bradshaw, following return from his vacation or at some other time. I only want to tell Mr. Bradshaw ^{that} that is my view of the law.

Mr. Shibley: Well, I am just trying to solve a problem before it is created. My understanding is when documents or other ~~information~~ information that would otherwise be privileged ~~is~~ ^{it is} published to

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PLG

(Mr. Shibley)

third parties, the client has waived the privilege and I was relying on that in respect of the question I put to Mr. Bradshaw.

Mr. Thomson: Of course, the difficulty is, the committee has heard what Mr. Moog said, the committee ~~has~~ heard what Mr. Candy has said. Mr. Bradshaw has not, and I am not sure that Mr. Moog and Mr. Candy gave precisely the same version with respect to that conversation.

Mr. Shibley: Well, ~~■~~ I tried to be as careful as I could in citing the evidence, and I didn't hear anybody say that I had ~~misstate~~ misstated it. I think it is clear that what has been published by Mr. -- I am sorry, what is clear is that the evidence indicates that what Mr. Moog published to Mr. Candy and through him to the Commission, the Hydro Commission, was that on March 30, the Swiss portion of the financing was secure. On July 19, the developer anticipated the whole of the financing would be Swiss, and in the interim was the meeting with the Swiss banker the expectation of a message in mid-June, the preparation just to fill it out of a June 23 memorandum^{um} for the assistance of the Commission ~~and~~ which first sat on the problem of who was to have the contract on June 29. Now I want to know therefore, on the basis of that evidence of communications, what you know or what is your information, Mr. Bradshaw, as to ~~whether~~ whether the expectation of ~~Mr. Moog as at July 19 was that the whole of the finance~~

Tape H 1578 follows

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12.20 - 12.25 p.m.
M.R.

(Mr. Shibley)

~~Mr.~~ Mr. Moog as at July 19 was ^{that} ~~at~~ the whole of the financing would be Swiss.

Mr. Thomson: I'm sorry, the witness is now conferring with me; if any of the committee members has any objection, *of course, I'll stop.*

Mr. Bullbrook: Not at all.

Mr. Deans: No. Not at all. Go ahead.

Mr. Shibley: *Go ahead. & Mr. Thomson: Pardon me?*
Mr. Chairman: We are quite happy to have you

confer, sir.

Mr. Shibley: Do you want a recess?

Mr. Thomson: No, no, I don't think a recess will be necessary.

Mr. Bradshaw: ~~Unhappily~~ Mr. Thomson says that I can give the answer this way. Mr. Shibley, I have no recollection whatsoever of having discussed the financing of the project in Switzerland with Mr. Moog during this period of time you are talking about.

Mr. Shibley: Oh, I'm sorry, Mr. Bradshaw, I want to know whether you have any knowledge or information, however and whenever it was obtained?

Mr. Bradshaw: There would have been none except from Mr. Moog and I don't - I can't ^{even} remember talking to him about it.

Mr. Bullbrook: Do we understand from that answer — and I'm interested in Mr. Thomsons's comments because I'm inclined to agree with our counsel, ~~the~~ the essence of solicitor and client privilege is confidentiality and once confidentiality has been disposed of by the client, then the privilege doesn't exist.

Now, I - maybe Mr. Bradshaw said that he doesn't remember any discussion. If that's it it should be fairly well an end to it but if he is saying that the privilege is still claimed, ^{I'm} ~~I~~ really interested in Mr. Thomson's comments.

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M.R.

Mr. Bradshaw: No, I am saying ---

Thomson:

Mr. ~~Bradshaw~~ Mr. Bullbrook, when Mr. Bradshaw

advised me that he had no recollection of the matter it occurred to me that the question of privilege becomes simply academic and I'm not interested in delaying ~~this~~ this proceeding by having fights about academic matters.

I make it clear that Mr. Finlayson has not given me any authority to waive any privilege and ⁱⁿ advising Mr. Bradshaw as I did, I wasn't waiving anything but merely trying to get on with this.

Mr. Bullbrook: Well, that was the essence of my question; I think you agree, Mr. Thomson. If there is no recollection, then we don't have to digest perhaps ~~perhaps~~ a lack of agreement with Mr. Shibley.

Mr. Shibley: Mr. Bradshaw, is that the case, [?]
You have no recollection of discussing that aspect of the matter?

Mr. Bradshaw: That's what I tried to say the first time, Mr. Shibley.

Mr. Shibley: All right.

Well, now then, I would like produced to you, Mr. Bradshaw, a letter dated August 16, 1972 from yourself to the Equitable - I'm sorry, from Equitable to you, and before it's distributed perhaps counsel should be afforded their copies.

Mr. Thomson: Mr. Chairman, there is no privilege attached to the production of this letter.

Mr. Shibley: Thank you. Then I ask that it be made the next exhibit, Mr. Chairman.

Mr. Chairman: That will be Exhibit 193.

Mr. Shibley: Now, Mr. Bradshaw, this seems to be a follow-up of the discussions you earlier referenced respecting high-credit leases. Is that correct?

Mr. Bradshaw: Indeed yes, sorry, Mr. Shibley, I was looking ~~at~~ at the letter.

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Mr. Shibley: I'm sorry. You had already indicated to us you had a meeting in New York —

Mr. Bradshaw: Yes. No, that's right. That is a follow-up to our discussion.

Mr. Shibley: And they are sending you the insurance department rulings related to so-called high-credit leases. Is that right?

Mr. Bradshaw: I'd asked John Nugent for that.

Mr. Shibley: Yes. Now, then, did you examine into high-credit leases?

And perhaps I'd like produced to you another document which

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(Mr. Shibley)

~~Did you come into high credit lease?~~

~~Mr. Genest: And I'd like to be prepared to~~
~~you all these documents which before it is distributed be shown to~~
your counsel.

Mr. GENest: Is this last one an exhibit?

Mr. Shibley: Yes, 193, Mr. Genest. Do you recognize that document as having been compiled by you?

Mr. Thomson: No, this is a privileged document, Mr. Chairman.

Mr. Shibley: I'd like to understand the reasoning for that because before we deal with its content, did you discuss the need for a high-credit lease with representatives of Hydro?

Mr. Bradshaw: Yes.

Mr. Shibley: And in that connection, did you indicate to them that a high-credit lease was one wherein the rental rate would be sufficient to amortize the principal and interest payable under a mortgage, to fund the construction of their building?

Mr. Bradshaw: I believe so, Mr. Shibley.

Mr. Shibley: Was there any discussion with HYDRO as to the order of registration of a high-credit lease?

Mr. Bradshaw: Excuse me, Mr. Shibley, I wonder if I could just find out from - I don't know whether Mr. McCallum has in his file a copy of this memo. ~~Is that~~

Mr. Shibley: Yes, I was

Mr. Bradshaw: If he has a copy of this memo, then let's read the memo instead of

Mr. Shibley: That answers the problem, yes. Mr. McCallum, do you have that?

MR. McCallum: No, I don't know what you're talking about.

Mr. Bradshaw: I would have been more likely to give it to his partner, Mr. Houser.

Mr. Thomson: The difficulty is, Mr. Chairman, that - I know Mr. Bradshaw is anxious to co-operate, and I don't want to obstruct, but this memo certainly looks like a document prepared

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(Mr. Thomson)

by MR. Bradshaw for the benefit of his client. If it was released to a third party, then I agree with Mr. Bradshaw's assessment of the law, it ceases to be privileged. If it wasn't released to a third party, it's a privileged communication and I have no authority to waive that privilege, ~~in fact~~ nor does Mr. Bradshaw, and I instruct him accordingly.

Mr. ~~R.G.~~ Hodgson: Mr. Chairman, ^{1/11} might be a good time for

.....

Mr. Chairman: Let me just ask Mr. Thomson - this document, Mr. Thomson, is in the possession of our counsel as you know. And that I understand there's ~~a~~ quite a difference between the obligation to disclose and the obligation to produce, and once the document has been produced, rather than simply disclose, I am suggesting it is no longer privileged. You may not want to comment on that, I give you the opportunity.

Mr. Thomson: I will comment, Mr. Chairman. The only difficulty I have - in the normal course of events that would finish it, except I heard an argument yesterday, and I can't take sides in it, as between Mr. Bradshaw - ~~I~~ I'm sorry, Mr. Shibley and Mr. Finlayson, with respect to the circumstances in which that document was delivered. May I have a moment with Mr. Bradshaw just to see if there is another way in which that comes in.

Mr. Henderson: Mr. Chairman, do we go on to ~~the~~ quarter to one, or what do we do? There's not much point in breaking at 12:30. I was thinking you might want to break and come back at two instead of the 2:30. How's that?

Mr. Chairman.: That suits me.

also

Mr. Thomson: Mr. Chairman, we are ~~almost~~ in the position in which Mr. Bradshaw is almost certain that that document was given to the Hydro. Of course, if that's so, then again we ~~are~~ are dealing with an academic problem.

Mr. Shibley: Could you also find out if the other document was given to Hydro, the September 8 one?

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(Mr. Shibley)

-

If Mr. McCallum had both documents

Mr. Genest: Which is the September 8th one, Mr. Shibley?

(Tape H-1580 follows)

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fvk

(Mr. Shibley)

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~~Mr. Genest: Which is the September 8 one, Mr. Shibley?~~

Mr. Shibley: I'm not going to tell you.

Mr. Genest: It's very hard for me to find out if it's in the files ~~✓~~ I don't even know what it looks like.

Mr. ~~Chairman~~ Thomson: We can sort that out over lunch.

Mr. ● Chairman: We will adjourn until - Yes, Mr. Shibley.

Mr. Shibley: May I ask this? May I ask Hydro and Mr. Bradshaw, over the recess, ~~■~~ and Mr. McCallum, to ascertain what documents passed between Mr. Bradshaw's office and Mr. McCallum's office and Hydro's offices?

Mr. Genest: Mr. Shibley●, as far as Hydro itself is concerned, you have, of course, all documents and you heard me at the beginning of this long session say that as far as the negotiations for this transaction went, Hydro waived any claim to privilege.

Mr. Shibley: I realize that and that's why I think that it is now important as to what's in Mr. McCallum's and Mr. Houser's files.

Mr. Genest: We'll take a look at those. These are getting compiled now in chronological order. I'll try and get the information over lunch.

The committee took recess at 12:³²~~30~~ o'clock, p.m.

APPEARANCES

Committee members:	J.N. Allan
	J.E. Bullbrook
	I. Deans
	M. Gaunt
	L.C. Henderson
	R.G. Hodgson
	W. Hodgson
	J.P. MacBeth (Chairman)
	W. Newman
	J.A. Renwick
	G.W. Walker

Clerk of the committee:	Paul Moore
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Committee counsel:	R.E. Shibley, QC
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Assistant to committee counsel:	J.P. Bell
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Ontario Hydro counsel:	Pierre Genest, QC
	James McCallum, QC

Canada Square counsel:	Douglas Laidlaw, QC
	Blair Cowper-Smith
	G.D. Finlayson, QC

Campbell, Godfrey & Lewtas and representing Mr. Moog	J.A. Bradshaw
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Representing Mr. Bradshaw	Claude Thomson
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List of exhibits introduced during this sitting
appears on the next page.

INDEX TO EXHIBITS

<u>Exhibit</u>	<u>Page</u>	<u>Description</u>
193.	1578-2	Letter from John F. Nugent, Equitable Life, to J.A. Bradshaw, August 16, 1972 re high credit leases.

BINDING SECT. NOV 15 1974

